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A  
C O M P I L A T I O N  
OF THE  
GENERAL AND PUBLIC  
S T A T U T E S  
OF  
THE STATE OF GEORGIA;

WITH THE  
FORMS AND PRECEDENTS  
NECESSARY TO THEIR PRACTICAL USE.

AND  
*An Appendix*

CONTAINING THE NATURALIZATION LAWS; THE CONSTITUTIONS OF THE UNITED  
STATES AND OF GEORGIA, AND THE RULES OF PRACTICE.

BY HOWELL COBB.

NEW YORK:  
PRINTED BY EDWARD O. JENKINS,  
No. 26 FRANKFORT STREET.

1859.

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TO THE  
MEMBERS OF THE GEORGIA BAR,

*This Work*

IS

VERY RESPECTFULLY INSCRIBED

BY ITS

AUTHOR.







## REPORT OF THE COMMITTEE.

TO HIS EXCELLENCY JOSEPH E. BROWN,

*Governor of the State of Georgia.*

SIR,—Having been appointed by your Excellency, in pursuance of a Resolution of the General Assembly of this State, assented to December 11, 1858, to examine the Compilation of Statutes, with Forms, prepared by HOWELL COBB, Esq., of the County of Houston, we now report to your Excellency, that we have carefully and minutely examined the Manuscript-copy of the entire Work referred to. This Work embraces all the Statutes of this State, of general interest, including the acts of the last session of the Legislature, and has various appropriate and convenient Forms, arranged under the Statutes to which they apply. We have no hesitation in reporting to your Excellency, the correctness, and the faithful execution of this Work, and that in our opinion it will not only be larger than the former Work of Col. Cobb, styled “Analysis and Forms,” but it will be superior to it, in comprehensiveness, arrangement, and accuracy.

Respectfully, your obedient servants,

JOHN M. GILES,  
THOMAS P. STUBBS,  
JAMES A. PRINGLE.

June 24, 1859.

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## EXECUTIVE ORDER ON THE ABOVE REPORT.

EXECUTIVE DEPARTMENT, Milledgeville, Georgia,

*July 5th, 1859.*

The Committee appointed to examine the new Compilation of the Statutes of this State, and Forms, prepared by Howell Cobb, Esq., of Houston County, having reported to me, that the Work is correctly and faithfully executed; I do, therefore, in compliance with the Joint Resolution, passed by the last General Assembly of this State, hereby subscribe for, and order, three thousand Copies of said Work, for the use of this State, to be paid for on delivery, at five dollars per Copy; upon which said subscription, an advance of three thousand dollars is this day made.

JOSEPH E. BROWN,

*Governor.*







## P R E F A C E.

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OF all the secular pursuits in which men engage, there is not one better calculated to chasten the mind and impress it with correct and elevating sentiments, than the Law. The study of some of the sciences, that of Geology, for instance, is calculated sometimes to embarrass, sometimes to confuse the mind. Geology cannot harmonize its own discoveries with the inspired account of the Creation, and, therefore, causes the mind to doubt, perhaps to disbelieve. To him who is accustomed to look below the surface of things, and make his investigations philosophically, this only shows, (no matter what the pretensions may be,) either that the science itself is not perfectly understood, or has in it radical imperfections. The noble science of Law has connected with it no such embarrassing characteristics; on the contrary, it is relieved from all such difficulties, for it accepts the Divine account as matter of Faith; in other words, it recognizes the imperfection of all human knowledge. It is a simple fact, that from a Law Library may be arranged as complete a Code of Morals, and as perfect a Creed of Christian Faith, as would be satisfactory to the most exacting Professor of Religion, or the most orthodox Christian Church; therefore no Lawyer properly imbued with the teachings of his Profession, *can* be an Infidel or a Skeptic.

There are certain qualifications necessary to constitute a scientific Lawyer, to which we propose here briefly to allude; these qualifications are both natural and acquired.—*First*, the person who intends to follow the Law as a Profession, must have, at least, a fair share of intellectual ability—capacity. No greater mistake can be made than to suppose that *any* man can become a Lawyer—there are, comparatively, but few who can make such an attainment. There are many pre-requisites necessary to qualify a good Lawyer; and if a person possess, in abundance, all the others, and be deficient in capacity, he had better turn his attention to some other employment, for he never will be able to arrive at distinction in this. *Secondly*, Cast of Mind. Supposing the person to be possessed of sufficient capacity, yet if the mind be without the proper bias, turn, taste for philosophical research, patience to plod through the most exhausting

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and apparently, useless drudgery and toil, he cannot succeed. *Thirdly*, admitting the possession of capacity and taste for the Law, the next qualification to which we refer, is that of Education. The Education must be, at least, good; it *should be* collegiate and scientific. The Law is full of technicalities; these are expressed mostly in Greek, Latin, and French; therefore, it is easy to see that if the student has not a tolerable knowledge of these languages, he cannot become familiar with these terms, and consequently, never can be a scientific Lawyer. *Fourthly*, Application. The student must consent to labor, for years, sleeplessly, untiringly, continuously; the task is difficult, hard, but let him not be discouraged, for the reward bestowed is equivalent to the labor required—let him persevere, for when the day of triumph comes, as it assuredly will, it will leave nothing to be desired.

There is no qualification more indispensable to a Lawyer, than good Moral Character—his Profession teaches, and the public demand this. Moral Character is settled by practices—habits, and therefore depends upon the individual himself. If a Lawyer be seen in places where he ought not to be seen, and be known to indulge in practices incompatible with the strictest Morality, he at once drops below the dignity of his Profession, and sinks in public esteem. Nor does he meet the full amount of the obligations which are upon him, by abstaining from vicious and debasing practices alone, he must possess positive traits of character, which are not only unmistakable, but which always, everywhere, leave their impress. He must love justice; be careful to do no wrong; be easily appeased; ready to forgive; generous to the needy; kind to the poor; in a word, high-toned and magnanimous in all his deportment.

Another trait in a well-balanced character may here be stated. A perfect Lawyer must possess a sufficient knowledge of our Holy Religion to understand its requirements, and to acknowledge its obligations; the position which he occupies in society requires this. What does it signify that Toland, Bolingbroke, Morgan, Chubb, Gibbon, Hume, Voltaire, and many of their *confrères* possessed commanding talents, brilliant intellects? While the literary labors of some of them are acknowledged to be valuable, the want of proper respect for Religion assigns to them a place, in the estimation of the virtuous and the good, that is by no means enviable. These truly great men, (in a literary sense,) employed their intellectual powers in the most mischievous of all causes—the cause of infidelity. What position do they now occupy in the estimation of the intelligent world? The race to which they belonged would have been better off had they never lived, and every succeeding day adds to the degradation which attaches to the character of each. Infidelity and skepticism ever envelop their votaries in blight and mildew.

There is no one qualification necessary to command success at the bar more important than that of oratory; therefore, to speak well—eloquently, should be the constant aim of the student. To accomplish this, he may



have to accustom himself to the most rigid discipline. To some extent, the power of oratory is natural, but most of the qualifications necessary to a perfect orator may be acquired. In illustration of the idea which we here wish to present, we refer to the case of Demosthenes. Speaking of this great orator, Rollin says: "He had a weak voice, a thick way of speaking, and a very short breath; notwithstanding which, his periods were so long that he was often obliged to stop in the middle of them for respiration; this occasioned his being hissed by the whole audience. He ventured to appear a second time before the people, and was no better received than before." This would seem to be sufficient to overwhelm the most courageous; but Demosthenes found a friend in Satyrus, who, perceiving his merit through his failures, came forward with those advices which were calculated to re-assure him, and which resulted in his complete success. "His efforts to correct his natural defect of utterance, and to perfect himself in pronunciation, (the value of which his friend had made him understand,) seem almost incredible, and prove that industrious perseverance can surmount all things. He stammered to such a degree that he could not pronounce some letters—among others, the first in the name of the art he was studying, *rhetoric*; and his breathing was so short that he could not utter a whole period without stopping. He overcame these obstacles, at length, by putting small pebbles into his mouth, and pronouncing several verses in that manner, without interruption, while walking and going up steep and difficult places, so that at last no letter made him hesitate, and his breath held out through the longest period. He went, also, to the sea-side, and while the waves were in the most violent agitation he pronounced harangues, to accustom himself, by the confused noise of the waters, to the roar of the people and the tumultuous cries of the public assemblies. He took no less care of his action than of his voice: he had a large looking-glass in his house, which served to teach him gesture, and at which he used to declaim before he spoke in public. To correct a fault which he had contracted by an ill habit of continually shrugging his shoulders, he practised standing upright, in a kind of very narrow pulpit or rostrum, over which hung a halberd, in such a manner that if, in the heat of action, that motion escaped him, the point of the weapon might serve, at the same time, to admonish and correct him." After Demosthenes had "carried the art of declaiming to the highest degree of perfection of which it was capable," and "when he was asked, three several times, which quality he thought most necessary in an orator, he only answered *pronunciation*, and, by making that reply three times successively, insinuated that that qualification was the only one the want of which could be least concealed, and which was the most capable of concealing other defects; and that pronunciation alone could give considerable weight, even to an indifferent orator, when without it the most excellent could not expect the least success." No one need be told that the civic triumphs of Demosthenes were more brilliant, lasting and



valuable, than the military achievements of the distinguished pupil of Aristotle: while the triumphs of the one are traditionally familiar, to become acquainted with the deeds of the other we must resort to the libraries of the learned. The student should study well the character of this unequalled Declaimer; and, although frequent failures may mark his first efforts, let him not become discouraged, for success will finally reward perseverance. After all, he may not become a Forsyth, a Berrien, a Lumpkin; usefulness, success, distinction, does not require that he should.

The Practice of the Law brings with it many Professional Obligations, and if much care be not observed, the desire for success will betray the young Practitioner into the non-observance of these engagements. Success in the Practice is very desirable, very enchanting, and will mislead the beginner if he be not very careful; therefore, he should be ever awake to Professional accountability, and preserve it inviolate; remembering that nothing can excuse, palliate, or justify, its violation. Professional engagements, although difficult to specify, will present themselves, at every turn, in the Practice—they are properly met by a liberal and high-minded course of conduct.

*A Judge of Law.*—It becomes us to speak guardedly of the character and qualifications of a Judge, because we may not have a proper conception of this character, and these qualifications. He should, we think, be kind and conciliating—for in the discharge of his duties, he will find many occasions which will require the exercise of the tenderest sensibilities of human nature—if, on the contrary, he be overbearing and tyrannical, no talents, however brilliant, no learning, however varied and extensive, can justify the act of trusting him with power. He should be patient; without patience, as a marked trait of character, it is impossible to have the qualifications which should distinguish a Judge. A Judge should be patient to hear all that can be said, which would lead to the discovery of truth—he should be *indulgently* patient with one accused of crime. He should be distinguished for firmness; we do not mean unreasonable obstinacy, but intelligent firmness, so that after having heard patiently he may decide properly and maintain the decision firmly, no matter how far it goes, should it extend even to the forfeiture of human life. A Judge should be eminent for legal learning, distinguished for his attachment to the profession, and remember that it requires the constant study, the profoundest thinking of the longest life, to become a proper administrator of the law.

When the writer was a much younger man than he is now, he had the weakness to suppose that *he* could administer the law as a Judge; experience has served to convince him that he was not only not qualified *then*, but that he is not qualified *now*, for the discharge of the duties of this high and very responsible office.

The Author has inscribed this volume to the members of the Georgia



Bar; the only embarrassment he feels in doing this, arises from the fact that the offering is not more worthy of the acceptance of those to whom it is made.

More than thirty years have gone into the past, since the Author was admitted to the Practice of the Law; at the time of his admission he was without either fortune or friends, but his poverty and obscurity did not operate against him; his admission is to be attributed more to the generosity of the fraternity with which he sought association, than to his preparation for it. During the whole of this period, the unabated kindness of his Professional Brethren has been manifest; it has served to cheer and encourage him in many of the uncertain and arduous struggles which have crowded a very laborious life; and his success (if he has attained success) is due, very much, to that kindness. He feels no difficulty in saying, that should misfortune overtake him, and he become incapable of labor, it is to the Members of the Bar he should apply for relief.

#### EXPLANATION.

The principal difficulty with which the Compiler has had to contend in the preparation of this work was, that if much care were not taken, it would be too large; he has, therefore, been compelled to omit much, which under other circumstances, he would gladly have included. A reference to the decisions of the Supreme Court was very desirable, but to do this would be to encounter the very difficulty which it was absolutely necessary to avoid.

No Statutes are included but such as are general and public; these have been transcribed from the authorized publications. Whenever the Compiler has discovered an error, (affecting the sense and meaning of the Statute,) he has suggested the correction; these corrections will be ascertained by their being inserted between brackets, in *italic letters*, thereby leaving the statute in its original form.

The numbering commences with the chapter and is continued throughout it. This directs the attention from the provisions of one Statute to those of another, on the same point.

Nothing assists more in arriving at the correct meaning of a sentence, otherwise ambiguous, than proper punctuation. Almost every writer adopts a plan peculiar to himself; the Compiler has followed this rule, in the preparation of this work; he indulges the hope that his plan will answer the object it was intended to secure.

Explanatory and Marginal Notes have been used. The Marginal Note expresses the meaning of the section of the Statute, opposite to which it is found. The Explanatory Notes, (in the body of the work,) generally, direct the Officer how his duty is to be performed; they are intended to make plain what otherwise, in some instances, might be perplexing.

The Forms and Precedents presented, are deemed sufficient, and although



the *experienced* practitioner may have no need of them, yet the *young* practitioner, the ministerial officer, and the people at large, may sometimes find them useful.

This volume is the result of the labor of years; it has been submitted, while in manuscript, to the revision of a committee appointed by Governor Brown, in accordance with a resolution of the Legislature of 1858. To these gentlemen is to be attributed much of the accuracy of the work. The intercourse between these gentlemen and the Compiler has been constant and agreeable, and, to him, interesting and profitable.

The Compiler cannot permit this occasion to pass without expressing to the Members of the Bar, and the people at large, his gratitude for the kind and indulgent manner in which a former publication, (*Analysis and Forms*, which this is intended to supersede,) has been received, and bespeaking for this their approval.

If this volume, unpretending as it is, shall answer the purposes for which it was prepared, the object of the Compiler will be realized, and he will be content.

PERRY, *Sept.*, 1859.



# CHAPTER I.

## JUDICIARY.

### SUPREME COURT.

AN ACT to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors; and to organize the same; and to regulate the proceedings thereof.—*Approved December 10, 1845.*

1. SEC. I. *Be it enacted*, That, in pursuance of the first section of the third article of the Constitution, there shall be, and it is hereby established, a Court for the Correction of Errors, to be called the Supreme Court of the State of Georgia. The said Court shall consist of three Judges, who shall be elected at the present session of the General Assembly: one for the term of six years, one for the term of four years, and one for the term of two years; during which terms they shall respectively hold their offices, unless sooner removed, in the manner pointed out by the Constitution. No person shall be eligible to the office of judge unless he shall have been duly admitted and licensed to plead and practise in the courts of law and equity, in this State, ten years, at least, prior to his election. The governor shall, within twenty days after the election of said judges, commission them, respectively, for the terms for which they shall have been elected. In case of the death, resignation, or removal from office, of any of the said judges, the governor shall appoint and commission some fit and proper person, to fill such vacancy until the meeting of the General Assembly next after such vacancy, when the General Assembly shall fill the same. And if any such vacancy occur during a session of the General Assembly, the same shall be filled at such session. Every judge of said court who shall be elected after the present session of the General Assembly, (except where he is elected to fill a vacancy,) shall hold his office for and during the term of six years, and shall be commissioned accordingly by the governor.

Supreme  
Court estab-  
lished.

Judges.

Who eligible  
to be Judge.

How commis-  
sioned.

Vacancy how  
filled.

Term of office.

2. SEC. III. It shall be the duty of all the judges of said court to attend at each term of said court; but if, from providential cause, any one of said judges cannot attend a court, such court may be holden by two judges. If only one judge shall attend a court, it shall be his duty to open the court, and to adjourn it to a day not more than two days beyond the regular term, at which time, if two judges do not attend, the court shall in that case be adjourned to the next regular term.

Judges must  
all attend.

Only one  
judge attend-  
ing, how to  
proceed.

3. SEC. IV. The supreme court shall hear and determine, at the first term of each court, all such cases in law and equity as may be brought from any of the superior courts of this State within the district, as created by this act, for which said supreme court is holden. All causes of a

Causes must  
be determined  
at first term.



Causes how carried up. criminal or civil nature may, for alleged error in any decision, sentence, judgment, or decree, of any such superior court, be carried up, from the counties in the respective districts aforesaid, to the judges of the supreme court, at the respective terms thereof, for such district, to be by the said supreme court revised and determined. Any criminal cause may be carried up to the supreme court on a bill of exceptions, in writing, specifying the error or errors of law complained of, to be drawn up by the party, his counsel or attorney, [see 41,] within four [see 21] days after the trial of the cause in which the decision or sentence has been had; and be submitted to the judge of the superior court before whom such criminal cause may have been tried, to be by him certified and signed. Any cause of a civil nature, either on the law or equity side of the superior court, may in like manner be carried to the supreme court, on a bill of exceptions, specifying the error or errors complained of in any decision or judgment, to be drawn up by the party complaining thereof, his counsel, solicitor, or attorney, within the time aforesaid, [see 21,] and submitted to the judge before whom the cause may have been heard, to be by him certified and signed, [see 42.] But in no case shall the facts be controverted in the supreme court so as to require attendance of any witness or witnesses, under any pretence whatever. Said supreme court shall hear and determine upon matters contained in the transcript of the record of the cause, and not otherwise. Upon exhibition of any such bill of exceptions to the judge of the superior court, it shall be his duty, if such bill of exceptions be true and consistent with what has transpired in the cause before him, to certify and sign the same. Such bill of exceptions shall operate as a supersedeas to the judgment, sentence, execution, or decree, of the court below, in all cases where bond may be given or affidavit filed, as hereinafter provided. If in civil cases, either in law or equity, the party complaining of error shall, within four days [see 23] after the term at which the exceptions were taken, pay all costs which may have accrued, and, either personally or by his agent, solicitor, or attorney in fact or at law, give bond with security to be approved of by the clerk of the superior court, and conditioned to pay the eventual condemnation money and all subsequent costs; and if in a criminal case, where the offence is by law bailable, the party complaining of error shall enter into recognizance with security, to be in like manner approved, conditioned for the appearance, in person, of such party complaining, to abide the final order, judgment, or sentence, of said court; and if the offence be not bailable, or if the party be sentenced to imprisonment in the penitentiary and be unable to give security as required, the judge of the superior court may order a supersedeas, at the time of certifying and signing the bill of exceptions. When such bill of exceptions shall have been signed and certified by the judge of the superior court, and such bond with security shall have been given, or recognizance with security entered into and cost paid, notice of the signing of such bill of exceptions shall be given, if in a criminal cause, to the attorney or solicitor general, and in civil causes, in law or equity, to the adverse party or his counsel, within ten days after the same shall have been done, and shall be filed in the clerk's office where such bond or recognizance has been given, immediately thereafter, and on a copy of such notice being served by a sheriff, constable, or attorney of the superior court, and filed in the clerk's office with the bill of exceptions, it shall be the duty of the clerk of the superior court below to certify and send up to the supreme court a complete transcript of the entire record of the cause below, duly certified under his hand and seal of office, and also the bill of exceptions, within

Criminal causes how carried up.

Bill of exceptions how formed.

Civil causes carried up in like manner.

Within what time.

Facts not to be controverted.

Decision on the Record.

Judge must sign Bill of Exceptions.

Supersedeas.

Party complaining must give Bond and Security in civil cases.

In criminal cases must enter into Recognizance.

Where the case is not bailable a Supersedeas may be ordered.

Notice of signing of Bill of Exceptions must be given.

Copy of notice must be served.

Transcript of the Record must be sent up.



ten days after he shall have received the original notice, with the return of service thereon.

4. SEC. V. The supreme court shall proceed at the first term, unless prevented by providential cause, to hear and determine each and every cause, which may in manner aforesaid, be sent up from the court below, upon the record and bill of exceptions, on the grounds therein specified and on no other grounds. Upon the decision of the supreme court, on matters of law or principles of equity, which may arise in the bill of exceptions, which decision shall always be in writing, [and be delivered by the judges of the said court *seriatim*, except in cases where they are unanimous, repealed—*see* 55,] the court shall cause to be certified to the court below, such decision and award, such order and direction in the premises, as may be consistent with the law and justice of the case. Which decision, so rendered and ordered, and direction so awarded, shall be respected and carried into full effect by the court below. If the decision and judgment of the court below be for any sum certain, and be affirmed in the supreme court, the plaintiff may, in the superior court, enter judgment against the defendant and his securities for the amount of principal, interest and costs, as shall have been confessed or found by a jury, and ten per cent. damages on the principal sum, and have execution immediately after the decision of the supreme court, so certified as aforesaid: *Provided*, that if any one or more of the judges of the supreme court shall certify that in his or their opinion, such cause was not taken up for delay only, then and in such case, the damages shall not be allowed. Judgments in the courts below, if affirmed, shall not lose any lien or priority, by reason of the proceedings in the court above.

Cases must be adjudicated at the first term.

How the decisions of the Court are to be made and certified.

Decision obligatory on Court below.

Damages in affirmed cases when for a certain sum.

Proviso.

5. SEC. VI. If any judge of the superior court shall refuse to certify a bill of exceptions when properly tendered, or if any clerk shall fail or refuse to send up the transcript of the whole record, in any cause, according to the provisions of this act; or he, or any sheriff, shall refuse or neglect to perform any duties imposed upon him by this act, said supreme court, while in session in any district in this State, may issue a writ of mandamus to such officer, and enforce obedience thereto, if necessary, by attachment. And in case that such refusal by any such officer have delayed the party applying for or tendering a bill of exceptions, as aforesaid, beyond the time limited in the foregoing part of this act, he shall not thereby lose his remedy, but may proceed as if the time limited had not expired.

Judge, Sheriff or Clerk refusing to do his duty, Mandamus may issue against him.

6. SEC. VII. The sheriff of the county wherein the supreme court is holden, or his deputy, shall attend the sessions thereof, and obey all lawful orders, enforce all lawful commands, and execute all lawful processes of said court; and for the service of any process or order of said court, he shall receive the fees allowed for like service in the superior courts, to be taxed and paid in like manner.

Sheriff of the County to attend the Courts; his Fees.

7. SEC. VIII. Each of the said judges of the supreme court shall receive a salary of two thousand five hundred dollars per annum, to be paid as the salaries of the judges of the superior courts are now paid. The amount of said salary shall not be increased or diminished during the continuance of such judge of the supreme court, in office; and no judge shall receive any other perquisite, reward, or compensation, than the amount of his salary. Each and every judge of the supreme court shall, before the governor of the State, and prior to his receiving his commission, take the oath to support the constitution, and other oaths, now by law required of the judicial officers of this State.

Salary of each judge during his continuance in office.

Judges to be sworn.

8. SEC. IX. The said supreme court shall appoint some fit and proper Appointment



and removal of clerk. person, as clerk thereof, who shall hold his appointment for six years, unless removed by said court upon complaint made and cause shown, for incapacity, improper conduct or neglect of duty. Said clerk shall keep an office at the seat of government, in one of the departments of the capitol, where all books, records and archives, and the seal of the said court, shall remain. He shall attend all the sessions of said court, and obey all lawful orders thereof; he shall keep, in substantial-bound books, fair and regular minutes of the proceedings of said court; a record of all its judicial acts; a docket of its causes, and such other books as said court may from time to time order and direct. He shall certify when required, upon payment of his fees, all proceedings of the said court, in the manner now in use in the superior courts of this State. And the record and minutes of said supreme court, and copies thereof, shall be evidence, in the same manner and under the same circumstances, as those of the superior courts now are; said supreme court being, to all intents and purposes, a court of record. The Clerk may appoint a deputy. said clerk shall be authorized to appoint a deputy or deputies, in his discretion, he being responsible for the faithful performance of their duties.

If the security becomes insufficient, new security may be given. 9. SEC. X. If during the pendency of any cause in the supreme court the security, taken on the removal of said cause to the supreme court, shall become insufficient or inadequate, by reason of removal from the State, insolvency or otherwise, it shall be the duty of the court, so certifying said cause, on application on oath, setting forth the facts, showing the inadequacy of said security, from insolvency or otherwise, to require additional and other security, unless the appellant shall make an affidavit, under the seventeenth section of this act. And if the appellant shall fail or refuse to give such additional security, or make and file such affidavit, the court below shall certify this fact to the supreme court, whereupon said suit shall be dismissed at the appellant's costs, and the judgment in the court below shall be affirmed with costs.

Appellant failing to give other security, case to be dismissed. Attorney bound for costs. 10. SEC. XI. The said clerk shall be entitled to the same fees as clerks of the Superior Courts in this State, to be taxed as part of the costs, and for which the attorney of record shall always be bound.

Appointment of Reporter. 11. SEC. XII. Some fit and proper person shall be elected by the judges of said court as reporter, who shall hold his office during the term of six years, unless sooner removed by the court, and shall receive for his services a salary from the State, of one thousand dollars per annum. Said reporter shall attend all the sessions of said court, and report, in a proper and professional manner, all the decisions there made, with the reasons therefor, [*and he shall not, during his service as reporter, appear as counsel or act as attorney, in any case, in any court of this State.*—Repealed, see 19.] The reporter shall from time to time publish, in good and substantial forms, the reports so made, as aforesaid; and if at any time he shall neglect to publish, within four months after sessions for each year have closed, the decisions of that year, he shall forfeit one fourth of his salary, for that year, and another fourth for every additional month's delay: *Provided*, that if the judges of said court, or a majority of them, shall certify that such delay was not from any fault or neglect of the reporter himself, or those under his control, such forfeiture shall not be incurred. The reporter shall also be allowed the copyright. *And provided further*, that he furnish, free of expense, and well bound, one copy of said reports to each judge of said court, for the time being; one copy to the clerk of said court, to be kept in his office as public property; twenty-five copies to the State, to be delivered to his excellency the governor, as soon as may be; said twenty-five copies to be disposed of as the General-Assembly

His duty.

Books of Reports to be published.

Forfeiture for neglect.

Copies to be furnished.



may direct; and a copy to each clerk of the superior court for each county in the State, to be kept in his office free for the perusal of any person.

12. SEC. XIII. The clerk and reporter of said court, before entering on the duties of their respective offices, shall be sworn to the faithful discharge of their duties, and take all other oaths prescribed by law for civil officers. Clerk and Reporter's oaths.

13. SEC. XIV. The judges of said supreme court shall have power to establish rules of practice, and to regulate the admission of attorneys in said supreme court, and to award all such process as may be necessary to enforce obedience to their orders and judgments, and as are usual in other appellate tribunals; and, also, to establish and procure a seal for said court. Powers of the Court in certain cases.  
Seal of the Court.

14. SEC. XV. In case plaintiff in error shall fail to cause the transcript of the record to be filed with the clerk of the supreme court, at the place of holding said court, by the third day of the term next succeeding the time of granting the supersedeas, and the adverse party shall file with the clerk of the supreme court, a certificate of the granting of such supersedeas, signed by the clerk of the superior court wherein the cause is depending, then it shall be the duty of such supreme court to affirm the judgment below, on such certificate. Plaintiff failing to file the record with the clerk, Court shall affirm the judgment below.

15. SEC. XVI. It shall be the duty of the attorney or solicitor-general of the judicial circuit wherein any criminal cause is tried, and which may be taken up in manner aforesaid, to appear and attend to said cause in the supreme court.—[*For fees see 29.*] Att'y and Sol. Gen. must attend Supreme Court.

16. SEC. XVII. Whenever a party shall not be able to give security, he shall file an affidavit, stating that he is unable from his poverty, to give the security for the eventual costs and condemnation money, and that his counsel has advised him that he has good cause for a writ of error; and upon filing the same in the clerk's office, he shall be entitled to all the privileges which he would have had if he had given the security and paid the costs, as required by this act, [*and see 52.*] And when any party, in any civil cause, residing out of the county in which it may be tried, shall not be desirous of obtaining a supersedeas, he shall be entitled to have his cause carried up to the supreme court, under the provisions of this act, without giving bond or making affidavit, as herein-before provided; the adverse party being at liberty to proceed with execution. Party unable to give security allowed to file affidavit.  
Non-resident party, where Supersedeas is not sought, need not give security.

AN ACT amendatory of the act of the General Assembly, organizing the Supreme Court, so far as to make it discretionary with Plaintiffs in Error, whether they will include as parties Plaintiff, Securities on Appeal; on Injunction Bonds and Writs of Error.—*Approved Dec. 22, 1847.*

17. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall in no case be considered as necessary to join with the parties to the suit in the superior court, carrying a case therefrom up to the supreme court, by bills of exceptions and writs of error, the security on appeal, or on any injunction bond. Not necessary to make Security a party in carrying up cases.

18. SEC. II. No writ of error shall be dismissed, or delayed, in its hearing and decision, where the parties to the writ or declaration below, are included in said writ of error. Parties to Writ, alone necessary.

AN ACT to amend the twelfth section of an act, entitled "an act to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors, and to organize the same, and to regulate the proceedings thereof," assented to on the tenth day of December, eighteen hundred and forty-five.—*Approved Dec. 24, 1847.*



- Reporter may practice. 19. SEC. I. *Be it enacted*, That from and after the passage of this act, so much of said recited section as declares that the reporter of said court, shall not during his services as reporter, appear as counsel, or act as attorney, in any case, in any court in this State, be and the same is hereby repealed.
- Salary paid quarterly. 20. SEC. II. The reporter of said supreme court shall be entitled to receive his salary quarterly, as other State officers, and be authorized to appoint an assistant reporter, such appointment to be submitted to and approved by the judges of said court, and entered upon the minutes, either in term or vacation. And the said reporter, or his assistant, shall attend each term of the court, unless prevented by providential cause, or relieved therefrom, by leave of absence, by the judge, [*judges.*]
- May appoint Assistant Reporter and Assistant's duty. SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT amendatory of the act approved the tenth of December, eighteen hundred and forty-five, organizing a supreme court for the correction of errors, in relation to bills of exceptions; giving of bond by the party taking up a case, and directory of the duty of the clerk, as to transcripts accompanying cases.—*Approved Dec. 29, 1847.*

- 30 days given within which to present Bills of Exception. 21. SEC. I. *Be it enacted*, That from and after the passage of this act, that so much of the act of which this is amendatory, as requires bills of exceptions, in both civil, criminal and equity cases, to be drawn up and submitted to the judge before whom such cause was tried, within four days after the trial thereof, be and the same is hereby altered and amended so as to allow them to be drawn up and submitted for signature and certification by the judge, within thirty days after the close of the term in which said cause was heard.
- Record of Court below not to be recorded in the Sup'me Court. 22. SEC. II. With a view to lighten the costs upon parties in said court, that the transcripts of the record, from the court below, shall not be recorded by the clerk of the supreme court, but shall be filed up carefully, by number of the proper term of the court, in which the cause, in which it was used, was tried.
- 30 days allowed for payment of Costs, etc. 23. SEC. III. So much of the fourth section of the act of which this is amendatory, as prescribes four days within which cost shall be paid and bond given, be and the same is hereby extended to thirty days.

AN ACT to curtail the labor of the Clerk of the Supreme Court, and to reduce the Cost in said Court, and to authorize amendments in said Court.—*Approved Feb. 23, 1850.*

- Remitter. 24. SEC. IV. The remitter shall consist of the judgment of the supreme court and nothing more.
- No Fees but for actual services. 25. SEC. V. The clerk of the supreme court shall make no charge but for services actually performed; and for services performed, he shall be allowed the same costs as are allowed by law to the clerk of the superior court.
- Bill of exceptions amendable. 26. SEC. VI. All bills of exception and the copies thereof, shall be amendable by order of the supreme court, so as to be made to conform to the record of the cause.—[*See 31.*]

AN ACT in relation to the Supreme Court of this State.—*Approved Feb. 23, 1850.*

*Whereas*, As it is essential to the proper administration of the laws, that the sessions of the Supreme Court be held at such places as will afford the Judges the use of competent libraries, which is not the case under existing laws, for remedy whereof—



27. SEC. I. *Be it enacted*, That all bills of exceptions, writs of error and citations, in or from the supreme court, shall be amendable without delay or cost, in conformity to the record, or cause below. Writs, &c., amendable.

AN ACT to amend the several acts in relation to the Supreme Court, so far as they relate to the Reporter and Assistant Reporter.—*Approved Feb. 23, 1850.*

28. SEC. I. *Be it enacted*, That it shall not be lawful for the reporter of the decisions of the supreme court of this State, or his assistant, in any case hereafter, to incorporate into, or publish with the decisions of said court; or to insert into any volume of said reports, any argument, or brief of counsel, farther than a simple statement, or brief of the authorities referred to by said counsel, and the points made. Argument of Counsel not to be included in published decisions.

AN ACT to compensate Solicitors-General for services rendered the State in the Supreme Court, in Criminal cases.—*Approved Feb. 23, 1850.*

29. SEC. I. *Be it enacted*, That the solicitors-general of the several judicial circuits of this State, for the rendition of official services in the supreme court, in criminal cases, shall receive the following fees, to wit:— Fees of Attorney and Solicitors-General.  
In all cases where the punishment is less than confinement and labor in the penitentiary, the sum of fifteen dollars; in all cases involving punishment by confinement and labor in the penitentiary, the sum of thirty dollars; and in all cases where the punishment is death, the sum of fifty dollars.

30. SEC. II. Upon the presentation of the certificate of the clerk of the supreme court, of the trial of the case or cases, and the rendition of the service, the governor shall draw his warrant in favor of the solicitor or solicitors, in accordance with the provisions of the first section of this act. How paid.  
Any law to the contrary notwithstanding.

AN ACT to regulate the Practice of the Supreme Court, and of the Superior Courts of this State, and for other purposes. And to relieve suitors in the Supreme Court. And to change the districts, times and places of holding the Supreme Court.—*Approved Jan. 22, 1852.*

31. SEC. I. *Be it enacted*, That when the original writ of error, original citation and notice, and the original bill of exceptions, shall be filed and served within the time prescribed by law, no cause pending in the supreme court shall be dismissed, but any other error or defect shall be amended instanter. What Amendments may be made and when.

32. SEC. II. That the original bill of exceptions, after being filed in the clerk's office of the superior court, shall be copied by the clerk thereof, and the copy retained by him and filed in office, and the original sent up, with the papers in the cause. Original Bill of Exceptions to be sent up; copy retained.

33. SEC. III. That the law which requires the decisions of the judges of the supreme court, to be handed to the reporter, to wit: the first section of an act "to curtail the labor of the clerk of the supreme court, and to reduce the cost in said court, and to authorize amendments, in said court," approved February 23, 1850, be and the same are hereby repealed. And hereafter said decisions shall be handed to the clerk, so soon as written out, and shall immediately be recorded by him, and then turned over to the reporter. Opinions to be recorded by Clerk, and then turned over to Reporter.

34. SEC. IV. That when any clerk of the superior courts shall fail, refuse, neglect or omit to certify and send the whole, or any part, of the papers in any cause certified to the supreme court, it shall and may be lawful for the party, or his or her attorney, to make oath thereof; and upon application to any one of the justices [*judges*] of the supreme court, either in term-time Proceedings where Clerk refuses to send up complete Record.



or vacation, a rule *nisi*. shall issue, under the order of said justice or court, requiring said clerk to show cause why said papers should not be certified and sent up; and to show cause why he should not be punished as for a contempt, for his refusal, failure, neglect, or omission of duty; which rule shall be returned to the next, or then present term of the court for the district to which said clerk belongs, under such rules and regulations, and upon such service, as said justice or court, in vacation or term-time, may direct. And upon the return of said clerk being made, the said court may pass such order in the premises, as may seem right and proper: *Provided*, that no punishment for contempt, as aforesaid, shall exceed that now prescribed by law for contempts.

Proviso.

Bill of Ex-  
ceptions must  
be signed by  
presiding  
Judge,  
although out  
of Office.

When Judge  
may die, or re-  
move from the  
State, what  
may be done.

Cases re-  
turned, when  
for trial.

Continu-  
ances in Supe-  
rior Courts, on  
appeal.

Operation of  
this act.

Times and  
Places of hold-  
ing Sessions.

35. SEC. V. That when any party to a cause desires to except to the decision of any judge of the superior court, and he shall resign, or his term of office shall expire before the expiration of the time within which the bill of exceptions should be tendered by law, the said judge shall be considered so far an officer capable of certifying, or refusing to certify the same, and subject to all the responsibilities for such refusal, as though he were in office. And when any judge, as aforesaid, shall die, or remove beyond the limits of the State, before the expiration of the time aforesaid, and the party complaining should not have, nor tendered, his said bill of exceptions, the right of said party to his said exceptions, shall not thereby be lost, but the same verified by the affidavit of two attorneys of the court, within the time prescribed for tendering bills of exceptions, shall entitle said cause to be heard in the supreme court, as though the same had been certified by the presiding judge.

36. SEC. VI. That when any cause shall be sent back to the superior courts, by the supreme court, the same shall be in order for trial at the first term of said superior court, next after the decision of the said supreme court. And where either party may have exhausted their continuances on the appeal, the said superior courts shall have full power and authority to grant one continuance to said party, as the ends of justice may require.

37. SEC. VII. That all causes in either the supreme, or the superior courts of this State, may be tried under the provisions of this act, or of those of which it is amendatory, until the first day of May next, when this act shall repeal all laws and parts of laws, militating against any of its provisions.

AN ACT to alter and amend an act passed 10th day of December, 1845, to carry into effect that part of the first section of the third article of the Constitution, which requires the establishment of a Supreme Court for the Correction of Errors, and for other purposes; so as to reduce the number of places for the sessions of said Supreme Court, and to prescribe the duty of the Clerk of said Court, in certain cases; and for other purposes.—*Approved Dec. 22, 1855.*

38. SEC. I. *Be it enacted*, That said supreme court shall be holden at the times and places following, to wit:—On the second Monday in January, and second Monday in June, in each year, for the first district, to be composed of the Eastern [*Brunswick*] and Middle judicial circuits, at Savannah. On the fourth Monday in January and the fourth Monday in June, in each year, for the second district, to be composed of the Macon, South-Western [*Pataula*] and Chattahoochee judicial circuits, at Macon. On the fourth Monday in March and the second Monday in August, in each year, for the third district, to be composed of the Flint, Coweta, Blue Ridge, [*Tallapoosa*] and Cherokee judicial circuits, at At-



lanta. On the fourth Monday in May and fourth Monday in November, in each year, for the fourth district, to be composed of the Western and Northern judicial circuits, at Athens. On the second Monday in May and November, in each year, for the fifth district, to be composed of the Ocmulgee and Southern judicial circuits, at Milledgeville.

39. SEC. II. That it shall be the duty of the clerk of the said supreme court to arrange the cases, on the docket of said court, by circuits; and it shall also be his duty, to give notice in one of the newspapers printed at the place where said supreme court is to be held, of the order in which the circuits are arranged; and every case that is docketed, before all the cases from that circuit are heard, and shall be considered docketed in time; and that errors may be assigned and issues joined, in said cases, at any time before said cases are called.

How Clerk must arrange Docket and give Notice.

SEC. III. [Repeals conflicting laws.]

AN ACT to simplify the method of carrying cases to the Supreme Court; and for other purposes.—*Approved March 6, 1856.*

40. SEC. I. *The General-Assembly of the State of Georgia, do enact as follows*—When any party is dissatisfied with any decision made by any of the judges of the superior courts of this State, such party may carry the case in which said decision is made to the supreme court, under the following rules and regulations:

How cases may be carried up.

41. SEC. II. The party complaining of such decision, shall make out a bill of exceptions and present [*it*] to the judge making the decision, within thirty days after the adjournment of the court at which said decision was made; and if such decision was made at chambers, within thirty days after such decision was made; and it shall be the duty of the judge to certify and sign, or refuse to sign, said bill of exceptions within two days after the same shall be presented to him, or shall come to his hand.

Bill of exceptions made out, presented and signed.

42. SEC. III. The certificate and order of the judge, which shall be signed by him, shall be substantially as follows: "I do certify that the following bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of. And the clerk of the superior court of the county of — is hereby required and ordered to make out a complete copy of the record of said case, and to certify the same to be a true and complete copy, and cause the same to be transmitted to the — term of the — district of the supreme court, that the errors alleged to have been committed may be considered and corrected." And which shall be the writ of error in said case.

Form of certificate of Judge.

43. SEC. IV. It shall be the duty of the party obtaining said bill of exceptions, within ten days after the same is signed by the judge, to serve the opposite party, or his attorney-at-law, with a copy of such bill of exceptions, or obtain an acknowledgment of service from the party or his attorney-at-law; and within two days thereafter to file said bill of exceptions in the clerk's office of the court where the case was tried, or depending, in which the errors complained of were committed.

Writ of Error.

Copy of the Bill of Exceptions must be served on the adverse party.

44. SEC. V. It shall be the duty of said clerk, within ten days after said bill of exceptions shall have been filed in his office, to make out a copy of said bill of exceptions; and also, a complete transcript and copy of the record in said case, and to certify the same to be a true and complete copy, and to cause the same, together with the original bill of exceptions, to be enveloped and transmitted to the next term of the supreme court of the district in which such county is situated, directed to the clerk of said court: *Provided*, said court does not sit in a shorter time than fifteen days

Clerk Superior Court must make out copy of Bill of Exceptions and transcript, and transmit them to Clerk Supreme Court.



from the time said bill of exceptions is filed in the clerk's office, as aforesaid; and if within a shorter period, then to the next term of said court held thereafter. And the clerk of said superior court shall retain said copy of the bill of exceptions in his office.

Other Writs unnecessary.

45. SEC. VI. No other writ of error, citation, or notice shall be required, except as herein-before provided; nor shall any exception be taken or allowed, as to the manner in which any case has been taken to said supreme court: *Provided*, the previous provisions of this act have been substantially complied with.

When Judge is absent at the time provided for the presentation of Bills of Exception, what may be done.

46. SEC. VII. If it shall so happen that the judge of the superior court should not be at home, at the time when application is made for signing a bill of exceptions, or when such bill of exceptions arrives at the post-office where he usually receives his letters, it shall be lawful for said judge to sign said bill of exceptions on his return home, although the time within which said bill of exceptions is to be signed, by the provisions of this act, may have expired [*and see 54*]: *Provided*, said application for signing said bill of exceptions was made before the expiration of the time aforesaid, or that said bill of exceptions was deposited in the post-office in time to have reached said judge before the expiration of the time within which bills of exception are to be signed by the provisions of this act. The judge shall state in his certificate the fact of his absence.

What unnecessary in Bills of Exception.

47. SEC. VIII. It shall not be necessary to embody in the bill of exceptions any paper, or the copy of any paper, that is contained in the transcript of the record; nor to state therein any fact that appears by said transcript; nor to embody therein any documentary, or other evidence, that is not connected with, or material for a correct and clear understanding of some one of the errors complained of in the bill of exceptions.

No assignment of Error necessary.

48. SEC. IX. It shall not be necessary to make any assignment of errors, as heretofore practiced in said court, but the case shall be heard upon the errors as set forth in the bill of exceptions, which shall be plainly and distinctly therein set forth.

AN ACT to provide a remedy for cases in the Supreme Court, where the Defendant in Error dies between the time of the trial in the Circuit Court, and the time of filing the Bill of Exceptions, Writ of Error, Citation and Notice, in said Court.—*Approved March 5, 1856.*

*Whereas*, no remedy has by law been provided for the service of copies of the Writ of Error, Citation and Notice, in cases where the Defendant in Error has departed this life after the trial of the cause in the Circuit Court, and before the time of filing of the Bill of Exceptions, Writ of Error, Citation and Notice in the said Circuit Court; for remedy whereof—

Death of Defendant provided for.

49. SEC. I. *Be it enacted*, That in all cases that now are, or hereafter may be, pending in the supreme court of this State, where the defendant in error has departed this life between the time of the trial of the cause in the circuit court, and the time of the filing of the bill of exceptions, writ of error, citation and notice, of signing and certifying of the bill of exceptions, in the circuit court in which such cause has been or may be tried, service of copies of such writ of error, citation and notice upon the attorney or attorneys engaged in behalf of such defendant in error in the trial of such cause in the circuit court, shall be held and deemed sufficient service to authorize the clerk of said circuit court to certify and send up to the supreme court a transcript of the record of such cause, together with the bill of exceptions, writ of error, citation and notice, as in other cases.



50. SEC. II. That in all cases contemplated by the first section of this act, and the death of such defendant in error has been or shall be suggested in said supreme court; and when it shall be made to appear to said supreme court, that legal representatives of such defendant in error, have been appointed and qualified to take charge of the estate of such deceased defendant, then and in that case, it shall be the duty of said court to cause *scire facias* to be issued to such legal representatives to make them parties to said cause in said supreme court, as in other cases: *Provided nevertheless*, that such legal representatives may come in, and on motion in said supreme court, cause themselves to be made parties defendant in error in such cause, as in other cases. Parties how made.

AN ACT to prescribe the mode of taxing Costs in the Supreme Court of this State.—*Approved March 6, 1856.*

51. SEC. I. *Be it enacted*, That from and after the passage of this act, when judgment shall be pronounced in any cause, in the supreme court of this State, the costs of such case in said court, shall be taxed by the clerk thereof, item by item, which taxing of costs shall be entered on the minutes of said court, at the foot of said judgment; and shall be, in all cases, transmitted in the remittitur to the court where the cause originated; for which service no extra costs shall be charged by said clerk. How Costs are to be taxed in the Supreme Court.

SEC. II. [Repeals conflicting laws.]

AN ACT to pay the Clerk the Cost due him in criminal Pauper cases, returned to the Supreme Court of this State, and to explain the 17th section of an Act, approved 10th December, 1845, organizing the Supreme Court of the State of Georgia.—*Approved Dec. 15, 1857.*

*Whereas*, by the 17th section of an act, approved 10th December, 1845, organizing the Supreme Court of the State of Georgia, it was not intended thereby to deprive the Clerk of said Court, of his costs, in criminal Pauper cases, returned to said Court: therefore—

52. SEC. I. *Be it enacted*, That his excellency, the governor, be and he is hereby authorized to draw his warrant, upon any money in the treasury, not otherwise appropriated, in favor of the clerk of the supreme court, for all legal cost due him, in each and all criminal pauper cases, returned to said court. It shall be the duty of said clerk, to submit to his excellency, the governor, a fair statement of each case, showing the nature of the crime charged, and the county from whence it came; returned under the seal of said court, before receiving compensation. Clerk's fees in criminal Pauper cases, how paid.

AN ACT to make uniform the Decisions of the Supreme Court of this State; to regulate the reversals of the same, and for other purposes.—*Approved Dec. 9, 1858.*

53. SEC. I. That from and after the passage of this act, the decisions of the supreme court of this State, which may have been heretofore, or which may hereafter be made by a full court, and in which all three of the judges have or may concur, shall not be reversed, overruled or changed; but the same is hereby declared to be, and shall be considered, regarded and observed, by all the courts of this State, (when they have not been changed by legislative enactment,) as fully, and to have the same effect, as if the same had been enacted, in terms, by the General Assembly. Certain Decisions not to be reversed or changed.

SEC. II. [Repeals conflicting laws.]

AN ACT to amend the acts in relation to taking cases to the Supreme Court.—*Approved Dec. 11, 1858.*



Judge unable  
to sign Bill of  
Exceptions,  
what may be  
done.

54. SEC. I. That if, in any case which has arisen, or may hereafter arise, the judge before whom said case was tried, shall by reason of absence from the State, death, sickness or other providential cause, be prevented from signing and certifying a bill of exceptions, the affidavit of the attorney for the plaintiff in error, (and other credible persons,) within three months from the trial of such case, to the truth of the bill of exceptions, or the agreement of the parties, or their counsel thereto, shall be a sufficient authentication of such bill of exceptions. And it shall be the duty of any judge of the superior court, on being presented with such bill of exceptions, as authenticated, to issue the order to the clerk of the superior court where such case was tried, to send the case to the supreme court which shall next succeed the issuing of such order, which shall sit for the hearing of causes for the district to which said superior court belongs; and such order, of such judge, shall be the writ of error, in such case.

Any Judge  
to issue an or-  
der to the  
Clerk, etc.

SEC. II. [Repeals conflicting laws.]

AN ACT to repeal a part of the fifth section of the act approved December 10th, 1845, entitled "An act to carry into effect that part of the first section of the third article of the Constitution which requires the establishment of a Supreme Court, for the correction of Errors, and to organize the same, and to regulate the proceedings thereof."—*Approved Dec. 11, 1858.*

Part of the  
act of 1845, re-  
pealed.

55. SEC. I. That so much of said recited section as requires the decisions of the supreme court to be delivered, or written out, by the judges of said court, *seriatim*; except in cases where they are unanimous, be and the same is hereby repealed.

SEC. II. [Repeals conflicting laws.]

### *Bill of Exceptions.*

STATE OF GEORGIA, } Be it remembered, that during the *regular*  
*Houston County.* } *April Term* of the Superior Court of said County, held in the year 1859, the case of *John Doe* against *Richard Roe*, (being an action of *Assumpsit*.) came on to be tried, before the honorable *Peter E. Love*, one of the Judges of the Superior Courts of this State, presiding in said Court, and a *special Jury*, empannelled to try said cause.

The *Plaintiff* tendered in evidence, the deposition of *Charles Smith*, taken by Commission on Interrogatories. The *Defendant* objected to said Testimony, on the ground *that the Witness only states his opinion and belief*. The Court overruled said objection and allowed the same to be read in evidence, to the Jury. Which Testimony is as follows:—[*Here copy the Answers, or so much as is material to show the objection.*]

To which ruling and decision of the Court, in admitting said Testimony, and in overruling *Defendant's* objection thereto, *Defendant* excepts.

The *Plaintiff* having closed his evidence, the *Defendant* offered in evidence, the original *Receipt*, of which the following is a copy:—[*Here copy the paper offered.*] The *Plaintiff* objected to said *paper* being read in evidence, on the ground, [*state the ground of objection.*] The Court sustained the objection and rejected the evidence; to which ruling and decision, the *Defendant* excepts.



The *Defendant* having offered no other evidence, the case was submitted to the Jury.

The *Plaintiff* requested the Judge to charge the Jury, as follows :—*[Here copy the request,]* which request the Court gave in charge; to which charge *Defendant* excepts.

The *Defendant* requested the Judge to charge the Jury as follows :—*[Here copy Defendant's request.]* The Judge refused to give said request in charge, to which refusal *Defendant* excepts.

The Jury retired and returned with a verdict in favor of the *Plaintiff*. And now, within thirty days from the close of said Term of the Court, aforesaid, the *Defendant* tenders this his Bill of Exceptions, and prays that the same may be certified, according to the statute. This May 1, 1859.

THOMAS P. STUBBS, *Att'y for Defendant.*

### *Judge's Certificate of Bill of Exceptions.*

I do certify that the following Bill of Exceptions is true, and contains all the evidence material to a clear understanding of the Errors complained of. And the Clerk of the Superior Court of the County of *Houston*, is hereby required and ordered, to make out a complete copy of the Record of said case, and certify the same to be a true and complete copy. And cause the same to be transmitted to the *Macon* Term of the *Second* District of the Supreme Court, that the Errors alleged to have been committed, may be considered and corrected.

*Given under my hand and official signature, this May 2, 1859.*

PETER E. LOVE, J. S. C.

### *Acknowledgment of Service of Copy of Bill of Exceptions.*

We acknowledge due and legal service of a copy of the within Bill of Exceptions, and waive further service. This May 9, 1859.

PRINGLE & KING, *Pl'ff's Att'ys.*

### *Clerk's Entry of time of filing in Office.*

STATE OF GEORGIA, } *Clerk's Office, Superior Court.*  
*Houston County.* } Filed in Office, this May 11, 1859.

WILLIAM H. MILLER, *Clerk.*

### *Bond in a Civil Case.*

STATE OF GEORGIA, } Whereas, a Bill of Exceptions has been ten-  
*Houston County.* } dered on behalf of the Defendant, *John Doe*, to the decisions and judgment of the Court, in the case of *Richard Roe against John Doe*, pending in the Superior Court of said County, and all costs having been paid; now therefore, we, *John Doe* principal, and *Charles Smith* security, both of said State and County, do acknowledge ourselves held and bound unto the said *Richard Roe*, his heirs and assigns, for the true payment of the eventual condemnation money, in said cause, and all future costs that may accrue in the same.

*Given under our hands and seals, this May 1, 1859.*

Approved, JOHN DOE, *principal*, [L. S.]  
 William H. Miller, C. S. C. CHARLES SMITH, *security*, [L. S.]



*Bond in Criminal Case.*

STATE OF GEORGIA } Indictment for *Misdemeanor*, in *Houston* Superior Court.

*vs.*  
RICHARD ROE. }

The Defendant, *John Doe*, having tendered a Bill of Exceptions to the decisions of the Court, on the trial of the above stated case, brings now, *Charles Smith* his security. And the said *John Doe* and *Charles Smith* do hereby acknowledge themselves held and bound unto his Excellency *Joseph E. Brown*, Governor of said State, and his successors in office, in the sum of *two thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—if the said *John Doe* shall be, in person, to abide the final order, judgment or sentence of said Court, in said cause, then this obligation to be void; otherwise, of force. This *May 1, 1859*.

Approved,  
*William H. Miller, Clerk.*

JOHN DOE, *prin'l*, [L. S.]  
CHARLES SMITH, *sec'ty*, [L. S.]

*Affidavit of Inability to pay Costs.*

STATE OF GEORGIA, { Personally appeared before the undersigned,  
*Houston County.* } *John Doe*, the defendant in a cause, (*Richard Roe against John Doe*,) pending in the Superior Court of said County, who being sworn, saith that his Counsel has advised him that he has good cause for a Writ of Error; and that from his poverty, he is unable to give the security for the eventual condemnation money and costs.

Sworn to and subscribed,  
before me, this *May 1, 1859*. }  
*James Mack, J. P.*

JOHN DOE.

*Clerk's Certificate to Transcript of Record.*

*Clerk's Office, Superior Court, May 20, 1859.*

STATE OF GEORGIA, { I hereby certify that the foregoing is a full and  
*Houston County.* } complete Transcript of the Records and Proceedings in the Superior Court of said County, in an action of *Assumpsit*, in which *John Doe* is Plaintiff and *Richard Roe* is Defendant.

*Given under my official Signature and Seal of Office.*

[L. S.]

WILLIAM H. MILLER, C. S. C.

*Supersedeas.*

STATE OF GEORGIA } Indictment for *Murder* and Verdict of Guilty,  
*vs.* } in *Houston* Superior Court.  
RICHARD ROE. } To the Clerk of the Superior Court and the Sheriff  
of the County of *Houston*.

The Defendant having tendered a Bill of Exceptions, in the above cause which has been allowed and signed; therefore, we command, that you wholly cease from any further proceeding whatsoever, in relation to said cause, until further order in the premises.

*Given under my hand and Official Signature, this May 1, 1859.*

PETER E. LOVE, J. S. C.



*Remittitur.*

STATE OF GEORGIA.—*Macon, 2d District.*

MONDAY, *February* 21, 1859.

The honorable, the Supreme Court, met pursuant to adjournment—  
Present their honors *Joseph H. Lumpkin, Henry L. Benning and  
Charles J. M'Donald.*

RICHARD ROE, Plaintiff in Error, }  
*vs.* } Bill, etc.  
 JOHN DOE, Defendant. }

This case came before the Court upon a transcript of the record from the Superior Court of *Houston* County, and after argument had, it is considered and adjudged by the Court, that the judgment of the Court below be *affirmed*.

*Bill of Cost.*

Case carried to judgment, \$3 75; recording proceedings, \$28 25, aggregate \$32 00. Recording opinion, \$3 50; Remittitur, \$1 25; Sheriff, \$1 25; aggregate, \$6 00.

Whole amount of Cost,	\$32 00
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In the above case, his honor Judge *Lumpkin*, has entered the usual certificate, to prevent the collection of damages.

SUPREME COURT OF GEORGIA.

MACON, *January Term*, 1859.

I certify that the above is a true Extract taken from the Minutes, and that the *Plaintiff* in Error paid the Bill of Costs.

Given under my hand and seal of office.

[L. S.]

ROBERT E. MARTIN, *Clerk.*

*Judgment of the Court below.*

RICHARD ROE, Plaintiff in Error, }  
*vs.* } Bill, etc.  
 JOHN DOE, Defendant. }

The above stated case having been carried to the Supreme Court at *Macon*, by Writ of Error, and the said Supreme Court, at the *January* Term thereof, having *affirmed* the Decision of this Court, on the trial of this cause; it is, on Motion of Council for Defendant in Error, ordered and decreed, that the said Judgment of Affirmance of said Supreme Court, be entered on the Minutes of this Court, as such. And it is further ordered, adjudged, and decreed, that the said Defendant *John Doe*, do recover of and from the Plaintiff in Error, the sum of *fifty* dollars as his Costs, in and about the said cause in *Equity*, (in the pleadings mentioned,) expended in the defence and prosecution of the same. And the Plaintiff in Error, in mercy, &c.

SAMUEL T. BAILEY,  
*Deft's Sol.*

April Term, 1859.



## SUPERIOR AND INFERIOR COURTS.

AN ACT to amend an act entitled “an act to revise and amend the Judiciary System of this State.”—*Approved Feb. 16, 1799.*

Courts to be held twice in each year. 56. SEC. I. The superior courts shall be held in each county in the respective districts, twice in every year, by one or more of the judges of the superior courts.

AN ACT to compel the Judges of the Superior Courts of each Circuit in the State, to hold Adjourned-Terms in every County within their Circuit, where the business requires, until the Docket is cleared; and for other purposes.—*Approved Dec. 11, 1858.*

Adjourned-Terms must be held. 57. SEC. I. *Be it enacted*, That from and after the first day of January next, it shall be the duty of every judge of the superior court, to hold an adjourned-term in every county within their respective circuits, where the business requires, to clear the docket.

Juries to be drawn. 58. SEC. II. That at the regular-term of the court, where an adjourned-term is required, juries shall be drawn for the adjourned-term, and at the adjourned-term, for the next regular-term; and all laws militating against this act, be and the same are hereby repealed.

Clerk, under certain circumstances to adjourn the Court. 59. SEC. IV. In case of unavoidable accidents, whereby the said superior court, in any county, shall not be held at the appointed time for holding the same, it shall be the duty of the clerk of such court, to adjourn the same from day to day, not exceeding two days; and if the said court should not sit within the two days, as aforesaid, such clerk shall then adjourn the same to the next term. [*And see 75 and 76.*]

Inf. Court held twice a year. 59.\* SEC. II. The inferior courts shall be held twice in every year, in each county, by the justices of the said inferior courts, or a majority of them.—[*As to adjournment, see 74.*]

## POWERS COMMON TO BOTH COURTS.

Jurisdiction of the Sup. and Inf. Courts. 60. SEC. III. The said superior and inferior courts shall have power and authority to hear and determine all causes, both civil and criminal, of which they shall severally have jurisdiction, according to the constitution and laws of this State, by a jury of twelve men, to be taken from the county, in such manner as shall hereinafter be prescribed, according to the usages and customs of law.

Courts of record. Court failing to meet, business continued. Witnesses free from arrest. 61. SEC. V. The said superior and inferior courts shall be courts of record, and have power to administer oaths, and exercise all other necessary powers appertaining to their jurisdictions respectively, according to law. And where any of the said courts shall fail to meet, the proceedings in such courts shall not thereby be discontinued, but shall stand continued over in the same manner as if such failure had not been. And all witnesses going to, attending on, and returning from any of the said courts, shall be free from arrest on any civil process.

Courts may compel the production of Books and Papers. Pl'ff failing, non-suit. 62. SEC. VI. The said courts shall have power on the trial of causes cognizable before them respectively, on ten days' notice, and proof thereof being previously given to the opposite party, or his, her or their attorney, [*see 63,*] on motion to require either party to produce books and other writings, in his, her or their possession, power or custody, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same, by the ordinary rules of proceeding in equity. And if the plaintiff shall fail or refuse to comply with such order, it shall be lawful for the court, on motion, to give judgment against such plaintiff, as in case of non-suit. And if the



defendant shall fail or refuse to comply therewith, the court, on motion, shall give judgment against such defendant, as in case of judgment by default. And the said courts respectively, shall have power and authority to establish copies of lost papers, deeds or other writings, under such rules and precautions as are or may have been customary and according to law and equity.—[*And see 65.*]

Def't failing,  
Judg't by De-  
fault.  
Lost Papers  
may be estab-  
lished.

AN ACT to alter and amend the sixth section of the Judiciary Act of this State, passed in the year seventeen hundred and ninety-nine, so far as relates to the Notices provided for in said section. And to prescribe the mode of issuing *Scire Facias*, in certain cases therein provided for.—*Approved Dec. 11, 1841.*

63. SEC. I. *Be it enacted*, That from and after the passing of this act, that the time allowed for the service of notices requiring the production of books, papers or other writings, to be used as evidence upon the trial of any cause cognizable before the superior or inferior courts of this State, as provided for in the sixth section of the Judiciary act of seventeen hundred and ninety-nine, shall be as follows, to wit:—if the party notified reside in the county where said suit is pending, shall be ten days; if out of said county and not more than one hundred miles distant, fifteen days; if over one hundred miles and less than two hundred, twenty days; if two hundred miles or more, or beyond the limits of this State, sixty days.

Notices how  
and when  
served.

64. SEC. II. In case of the service of any notice as aforesaid, where it shall be made clearly and satisfactorily to appear to the court before which the cause is pending, that the party notified has used due and proper diligence, but cannot respond to said notice, that it shall be continued at the instance of the parties notified.

Continuance  
allowed.

### *Notice to produce Books, etc.*

JOHN DOE  
vs.  
RICHARD ROE. } *Assumpsit in Houston Superior Court.*

The *Plaintiff* is hereby notified and required, to produce, on the trial of the above-stated case, his original *Books of Account*; kept for the year eighteen hundred and *fifty-eight*; containing the original entries of the *Account* of the *Defendant*; the same forming the foundation of the *Plaintiff's* suit. And all other Books and Papers in his possession, which in any manner relate to the above suit. As said Books and Papers contain evidence pertinent to the case, and will be required on the trial thereof. This *May 1, 1859.*

JAMES A. PRINGLE, *Def't's Att'y.*

AN ACT to provide for establishing Lost or Destroyed Papers, and suing upon the same.—*Approved March 5, 1856.*

65. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, when any person shall seek to establish lost or destroyed papers under the 6th section of the Judiciary act of 1799, he or she shall present to the clerk of the superior or inferior court, a petition in writing, together with a copy in substance, of the papers lost or destroyed, as near as he or she can recollect, which copy shall be sworn to; whereupon, the clerk shall issue a rule *nisi*. in the name of the judge of the superior court, if the application be made to the superior court, and in the names of the justices of the inferior court, if the application be made to the inferior court, calling upon the opposite party to show cause, if any he or she have, why the copy

Mode of es-  
tablishing  
Lost Papers.



sworn to, should not be established in lieu of the original so lost or destroyed.

Rule *nisi*.  
Service of  
Rule.

66. SEC. II. That said rule *nisi*. shall be served personally on the party, if to be found within the State, and if the party cannot be found within the limits of the State, then said rule *nisi*. shall be published in some public gazette in this State, for the space of three months, which publication shall be deemed and considered service.

Rule Absolute.

67. SEC. III. That the court to which said rule *nisi*. may be returnable, shall grant a rule absolute, establishing the copy of the lost or destroyed paper sworn to, at the first term of said court, if it appear to the court that the rule *nisi*. has been served according to the provisions of the second section of this act, and no sufficient cause appearing to the court, why said rule absolute should not be granted.

Continuance  
when allowed.

68. SEC. IV. That no motion for a continuance shall be granted on an application for a rule absolute in conformity with this act, unless it appear reasonable and just to the court; nor shall a continuance be allowed but once to the same party, only on providential cause shown to the court.

Clerk must  
furnish party  
with certified  
copy.

69. SEC. V. That the clerk of the court in which a lost or destroyed paper has been established, shall furnish the copy paper established in conformity with this act, with a certified endorsement on the same, (of the day and date and term of the court at which it was established,) to the party who had the paper established: *Provided*, all costs which may have accrued in establishing said paper, have been paid.

Suit may be  
commenced.

70. SEC. VI. That if the paper lost or destroyed be a note, bill, bond or other evidence of debt, the person owing the same, may institute suit upon the same, so soon as a rule *nisi*. has issued in conformity with this act.

Process what  
it must  
contain.  
Judgment  
when  
rendered.

71. SEC. VII. That whenever suit is constituted in conformity with the 6th section of this act, it shall be set forth in the original process, that the paper is lost or destroyed. And in no case shall there be a judgment had, until it shall be determined by the court, whether the application to establish the lost or destroyed paper sued on, be granted or not; and if granted, then judgment may be had, as in other cases.

Oyer when it  
may be  
required.

72. SEC. VIII. That oyer shall not be demanded in any case where the petition sets forth that the instrument sued on is lost or destroyed. But oyer may be demanded at the time of the rendition of judgment; and if the plaintiff produce a copy of the instrument sued on, in conformity with the 5th section of this act, it shall be taken and considered as the original.

Costs by  
whom paid.

73. SEC. IX. That all costs which may accrue in establishing lost or destroyed papers, in conformity with this act, shall be paid by the party having the same established, unless it be otherwise directed by the court.

SEC. X. [Repeals conflicting laws.]

### *Petition to Establish Destroyed Note.*

STATE OF GEORGIA, } To the *Superior* Court of said County. The  
Houston County. } Petition of *John Doe* sheweth, that on the *first*  
day of *January*, eighteen hundred and *fifty-nine*, Petitioner was pos-  
sessed, in his own right, of a certain *Promissory Note*, made and exe-  
cuted by *Richard Roe*, of said County (a copy of which, in substance,  
is hereunto annexed.)

That on the said *first* day of *January*, eighteen hundred and *fifty-*



nine, said *Note* was entirely *destroyed by fire*, the same being *due* and unpaid: wherefore, Petitioner prays that the annexed copy of said *Note*, may be established in lieu of the original. This *February 1*, 1859.

JOHN M. GILES, *Pet'r's Att'y*.

### *Copy Note.*

One day after date, I promise to pay *John Doe* or bearer, *one hundred* dollars. Value received this *December 25*, 1858.

RICHARD ROE.

### *Petitioner's Affidavit.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
   *Houston County.* } *John Doe*, who after being sworn says, that the facts stated in the foregoing *Petition*, relative to the annexed copy *Note*, are true. And that the copy *Note* is a true and exact copy of the original *Note destroyed*, as near as he can recollect.

Sworn to and subscribed, before me, }  
   this *February 1*, 1859. }

*James Mack, J. P.* }

JOHN DOE.

### *Rule Nisi. by the Clerk.*

GEORGIA—HOUSTON COUNTY.

JOHN DOE }  
   *vs.* }  
 RICHARD ROE. } *Petition to establish destroyed Note.* Clerk's Office of the *Superior Court.* *John Doe* having by his *Petition*, filed in this office, set forth that *Richard Roe*, of said *County*, made and executed a *Promissory Note*, of which the following is a copy: [*here set out a copy of the Lost Paper, sought to be established, signed by the Maker, etc.,*] and that said original has been *destroyed by fire*; and having prayed that said copy, which is sworn to, should be established in lieu of the original. It is, therefore, ordered that said *Richard Roe* show cause, (if any he have,) at the next *Term* of the *Superior Court* of said *County*, to be held on the *fourth Monday in April*, eighteen hundred and *fifty-nine*, why said copy should not be established in lieu of the original.

*Witness the honorable Henry G. Lamar, Judge of said Court, this February 1*, 1859.

WILLIAM H. MILLER, *Clerk*.

### *Rule Absolute.*

JOHN DOE }  
   *vs.* }  
 RICHARD ROE. } *Motion to establish destroyed Note.* *April Term*, 1859. It appearing to the Court here, that the *Rule Nisi*. granted by the Clerk of this Court, in vacation, upon the *Petition of John Doe*, (requiring the Defendant to show cause, if any he had, why the copy *Note*, in said Rule mentioned, should not be established in lieu of the original, declared to be destroyed,) has been duly served on the Defendant; and no sufficient cause appearing to the Court, why said Rule should not be made *Absolute*; it is, therefore, considered, ordered and adjudged, that said *Rule Nisi*. be made *Absolute*, and that the copy *Note*, to said *Petition* attached, be and the same is hereby established, in lieu of the original.

JOHN M. GILES, *Plff's Att'y*.



AN ACT to authorize the adjournment of the Superior and Inferior Courts, and Courts of Ordinary, in certain cases, by the Officers therein named.

*Approved Dec. 8, 1823.*

*Whereas*, it frequently happens from unavoidable circumstances, that the Judge of the Superior Courts; a majority of the Justices of the Inferior Courts, cannot attend at the regular term of said Courts, and that a term is thereby lost, to the great injury of those concerned, as well as a delay of justice—

Regular Term  
of the Inferior  
Court failing,  
how Court  
may be  
adjourned.

74. SEC. 1. *Be it therefore enacted*, That from and after the passing of this act, that if from any circumstance, a majority of the justices of the inferior court, in any of the counties of this State, should fail to attend at the regular term of said inferior courts, or at any adjourned-term, it shall and may be lawful for any one of the justices of the inferior court, in the county where such failure may take place, together with the sheriff or his deputy, coroner or constable and the clerk of said court, to adjourn said court to such time as they in their judgment may think proper.

Clerk Superi-  
or Court, to  
adjourn Court  
by order of  
Judge.

75. SEC. III. The clerks of the superior courts of this State, be authorized, whenever they are informed by the presiding judge that it is not possible for him to attend the regular term of said court, from sickness or other causes, to adjourn the same to such time as he may direct; and shall, moreover, advertise the same at the court-house of the county in which said court is to be held, and one or more times in some public gazette of the State.—[*See next Act.*]

SEC. IV. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to alter and amend the third section of an act entitled “An Act to authorize the Adjournment of the Superior and Inferior Courts, and Courts of Ordinary, in certain cases, by the Officers therein named,” passed December 8th, 1823.—*Approved Dec. 25, 1837.*

Adjournment  
for Providen-  
tial causes.

76. SEC. I. *Be it enacted*, That from and after the passage of this act, none of the superior courts of this State shall be adjourned under the above-recited act, for any other cause than that of sickness of the presiding judge, or of his family, or other Providential cause, which shall be expressed in the order of adjournment.

SEC. II. [Repealing section.]

AN ACT to authorize the Relator in any Writ of Mandamus, to traverse the Answer or return of any person, Officer, Corporation or Court of this State, to any Writ of Mandamus issued by the Superior Courts of this State.—*Approved Jan. 7, 1852.*

Return must  
be on Oath.

77. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any person, officer, corporation or court, of this State, shall make any answer or return, under or by virtue of any Writ of Mandamus, issued by any of the superior courts of this State; or any of the judges of said superior courts, the same shall be made on oath, to be taken at the time of making such answer or return. And the relator in said Writ of Mandamus, shall be at liberty to traverse the truth of such answer or return. And upon such traverse, an issue shall be formed and tried by a special jury at the term of the superior court at which said answer or return shall be made; and if made out of term-time, then to be tried at the term next after the making of said answer or return, as in case of other traverses.

And may be  
Traversed.  
Issue how  
tried and  
when.

If found to be  
false, Manda-  
mus absolute  
to issue.

78. SEC. II. That if the jury on the trial of the issue, as aforesaid, shall find said answer or return to be false, it shall be the duty of said superior court, to award a Mandamus Absolute, to issue against said person, officer, corporation or court, of this State.



SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

## MANDAMUS.

*Petition for the Writ of Mandamus.*

STATE OF GEORGIA, ) To the honorable *Henry G. Lamar*, Judge of  
Houston County. ) the Superior Courts of the *Macon* District.

The Petition of *John Doe*, of said County, sheweth unto your honor, that he has now pending in the *Inferior* Court of said County, a certain action of *Assumpsit*, against *Richard Roe* of said County, alleging that the said *Richard Roe* from your Petitioner unjustly detains the sum of *five hundred* dollars, besides interest; upon a certain *Promissory Note*, to the said *Inferior* Court exhibited and shown, and which *Promissory Note* is now attached to the said Writ of *Assumpsit* in the Clerk's Office of the said *Inferior* Court. On which action of *Assumpsit* before the said *Inferior* Court, holden in and for said County, on the *fourth* Monday in *July*, eighteen hundred and *fifty-seven*, said *Richard Roe* filed the plea of the *General Issue*. And upon the trial of the said action of *Assumpsit*, on the *fourth* Monday in *July* last, it was found by the *Verdict* of twelve lawful Jurors, duly empannelled and sworn to try said cause, that the said *Richard Roe* did owe your Petitioner on said *Promissory Note*, the sum of *five hundred* dollars for his principal debt, and the sum of *forty* dollars for his interest, and the costs of suit. Which *Verdict* was by the said Jury duly returned to said Court, at the last term thereof aforesaid, and now remains in the files of said Court. And your Petitioner, at the said last term of said *Inferior* Court, moved said Court, then and still consisting of *Charles Anderson*, *John Ragin*, *John D. Winn*, *William F. Postell* and *William T. Swift*, Justices of said Court, to order and permit said *Verdict* to be recorded; and said Court did nevertheless, omit, refuse and forbid, and still do omit and refuse to order and permit said *Verdict* to be recorded, to the great damage and grievance of your Petitioner. All which facts aforesaid, do more fully and largely appear by the files and records of said *Inferior* Court, here presented to your honor.

Wherefore, Petitioner moves your honor to issue the Writ of Mandamus, requiring and enjoining the aforesaid Justices, at the next ensuing term of said *Inferior* Court, to be holden in and for said County, on the *fourth* Monday in *January* next, to order said *Verdict* to be recorded, and to proceed to final judgment therein, or signify cause to the contrary thereof, to this Court, at the next term thereof. And, as in duty bound, your Petitioner will ever pray, etc. This *August* 1, 1859.

JAMES A. PRINGLE, *Pet'r's Att'y.*

*Order of the Judge.*

IN CHAMBERS, *May* 1, 1859.

STATE OF GEORGIA, ) The within Petition having been read and  
Bibb County. ) considered, it is hereby ordered, that the Clerk of the Superior Court of the County of *Houston*, do issue the writ of



Mandamus, directed to the Justices of the Inferior Court of *Houston* County, according to the prayer of the Petitioner. And let such other proceedings as are usual, be had.

*Given under my hand and official signature,*

HENRY G. LAMAR, J. S. C. M. C.

*The Writ.*

STATE OF GEORGIA, } *To the Sheriff of said County—Greeting :*  
*Houston County.* } Whereas, *John Doe*, of said County, by his Petition, shows that he has now depending before the Inferior Court of said County, (*Charles Anderson, John D. Winn, John H. Ragin, William F. Postell and William T. Swift*, being the Justices of said Inferior Court,) an action of *Assumpsit* against *Richard Roe*, of said County; alleging that the said *Richard Roe* detains from Petitioner the sum of *five hundred* dollars, besides interest; founded upon a *Promissory Note*, which *Note* is of file in said Court, in the Clerk's Office. To which action of *Assumpsit*, at the appearance term of said Court, the Defendant filed the Plea of *General Issue*. And at the trial term of said action of *Assumpsit*, the Jury impannelled and sworn to try said case, returned a *Verdict* into Court of *five hundred* dollars, principal debt, and the sum of *forty* dollars interest, and the costs of suit, in favor of the Plaintiff against the Defendant. And, whereas, it is further shown by the Petitioner, that he moved said Inferior Court to receive said *Verdict* and order it to be recorded, which motion said Inferior Court, (then and yet consisting of the Justices aforesaid,) rejected and refused, and said *Verdict* was not received and recorded. Now, therefore, in order that justice may be administered in the premises, you, the said *Charles Anderson, John D. Winn, John H. Ragin, William F. Postell and William T. Swift*, Justices of the Inferior Court of *Houston* County, are hereby directed to order the aforesaid *Verdict*, in said cause, at the term of said Inferior Court, following this date, to be recorded, and proceed to final judgment thereon; or, at the next term of our Superior Court, under the seal of your said Court, you signify and show cause to the contrary. And your Answer and showing you do cause to be transmitted to our said next Superior Court, to be held in and for said County, on the *fourth Monday in October* next.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this August 5, 1859.*

WILLIAM H. MILLER, *Clerk.*

*Return to the Writ of Mandamus.*

GEORGIA, *Houston County,* }  
 INFERIOR COURT, July Term, 1859. }

To the Superior Court of the County of *Houston*, to be held in *Perry*, on the *fourth Monday in October* next.

The undersigned, Justices of the Inferior Court, within and for the County of *Houston*, would respectfully represent that they have been duly served with a Writ of Mandamus, which issued in Chambers, from the honorable *Henry G. Lamar*, Judge of the Superior Courts of the *Macon* District, on the *fifteenth* day of *August*, eighteen hundred



and *fifty-nine*, them commanding and requiring at the term of the Inferior Court, then next to be holden, (and which was held in said County of *Houston*, on the *fourth* Monday in *July*, eighteen hundred and *fifty-nine*,) to cause to be received and recorded a certain *Verdict*, in the Petition of *John Doe*, said to have been rendered in a certain action of *Assumpsit*, in which said *John Doe* is Plaintiff, and *Richard Roe* is Defendant, pending in said Inferior Court, and to render final judgment thereon, or to show cause to the contrary thereof. Which Writ was and is, in the words and figures following, to wit: [*here set out the Writ.*] And that they did *not*, at the last term of said Inferior Court, cause said *Verdict* to be recorded in said cause, nor proceed to final judgment therein,—and for cause of such their omission to do the same, they assign and submit the following reasons, to wit: [*here set out the reasons for not allowing the Verdict to be received and recorded, etc., fully and at length.*]

*Given under our hands and official signatures,*

[Seal.]

CHARLES ANDERSON, J. J. C.  
JOHN H. RAGIN, J. J. C.  
JOHN D. WINN, J. J. C.  
WILLIAM F. POSTELL, J. J. C.  
WILLIAM T. SWIFT, J. J. C.

Attest—

JOHN H. KING, *Clerk.*

### *Verification of the Return.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
*Houston County.* } *Charles Anderson, John H. Ragin, John D. Winn,*  
*William F. Postell and William T. Swift, Justices of the Inferior Court*  
of the County aforesaid, and, being duly sworn, say, that the facts contained in the above *Answer*, so far as they relate to the act or deed of deponents, are true of their own knowledge; and, so far as they relate to the act or deed of any other person, they believe them to be true.

Sworn to and subscribed,  
before me, this *July 20*, 1859. }  
*James Mack, J. P.*

CHARLES ANDERSON.  
JOHN H. RAGIN.  
JOHN D. WINN.  
WILLIAM F. POSTELL.  
WILLIAM T. SWIFT.

### DECLARATION, PLEA, ETC.

79. SEC. VIII. All suits of a civil nature, cognizable in the said courts, respectively, shall be by petition to court; which petition shall contain the plaintiff's charge, allegation or demand, plainly, fully and distinctly set forth, and be signed by the plaintiff, or his, her or their attorney; and to which petition the clerk shall annex a process, signed by such clerk, and bear test in the name of one of the judges or justices of such court; directed to the sheriff, requiring the defendant or defendants to appear at the court to which the same shall be made returnable; and shall be served on the defendant or defendants at least twenty [*see 198 and 206*] days before the return thereof, by delivering a copy of such petition and process to the defendant or defendants, or leaving such copy at his, her or their most notorious place or places of residence. And if any such process shall be delivered to the sheriff, or other officer, whose duty it shall

Plaintiff's petition, what it must contain.  
Process.  
How directed.  
When served.  
When cannot be served.



be to execute the same, so late that it cannot be served in manner aforesaid, twenty days before the sitting of the court to which it shall be returnable, such process shall not be executed, but the officer shall return the same with the truth of the case. And if any original civil process shall be taken out within twenty days of the next court, the same shall be made returnable to the next court to be held after the expiration of the said twenty days, and not otherwise. And all process issued and returned in any other manner than that herein-before directed, shall be and the same is hereby declared to be null and void.

Void process.

AN ACT to alter and amend the 9th sec. of the Judiciary Act of 1799; and the 1st sec. of an act relative to Executions, passed Dec. 14, 1811. —*Approved, Dec. 22, 1840.*

Interested  
sheriff, how  
served with  
process.

80. SEC. I. All original process hereafter, issued by the clerks of the superior and inferior courts, respectively, where the sheriff who ought to execute the same, shall be anywise interested, shall be directed to the coroner of the county in which said sheriff may reside, and to the sheriffs of the adjoining counties; and shall be served and returned by the said coroner, or the sheriff of any one of such adjoining counties, at the option of the plaintiff, within such time, and in such manner, as required by law, in other cases.

81. SEC. IX. And for the more orderly and regular proceeding in the said courts, the following rules and methods shall be observed, to wit:—

Appearance. The defendant or defendants shall appear at the court to which the petition and process shall be returnable, and on or before the last day of the said court, shall make his, her or their defense, or answer, in writing, which shall plainly, fully and distinctly, set forth the cause of his defense, and be signed by the party making the same, or his, her or their attorney. Which said answer may contain as many several matters, as such defendant or defendants may think necessary for his, her or their defense:

Answer.

Cannot deny deed, &c., but upon oath. *Provided*, that no person shall be permitted to deny any deed, bond, bill, single or penal note, draft, receipt or order, unless he, she or they shall make affidavit of the truth of such answer, at the time of filing the same. And the said petition and answer shall be sufficient to carry the same to the jury, without any replication or other course of proceedings. And no petition, answer, return, process, judgment, or other proceeding in any civil cause, shall be abated, arrested, quashed or reversed, for any defect in matter of form, or for any clerical mistake or omission, [not affecting the real merits of the cause;] but the court, on motion, shall cause the same to be amended without any additional cost, at the first term; and shall proceed to give judgment according to the right of the cause, and matter of law; as it shall appear to the said court, without regard to such imperfections in matter of form, clerical mistake or omission. And no dilatory answer shall be received or admitted, unless affidavit be made of the truth thereof.

Petition and answer sufficient.

Matter of form amendable.

Dilatory plea must be under oath.

82. SEC. X. Where any defendant shall fail to appear and answer in manner aforesaid, the court, on motion of the plaintiff or his counsel, shall enter a judgment by default; and the plaintiffs' claim, allegation or demand, shall be tried, in all cases of judgment by default, by a jury; but no such trial shall in any case, be had at the first term. [*But see Rent.*] And no cause whatsoever, depending in said courts, shall be continued more than one term, at the instance of the same party. [*See continuance.*]

Judgment by default.

But one continuance.

83. SEC. XI. In all cases where a suit shall be instituted in any of the said courts, on any bond, note or other written obligation, subscribed by several persons, who reside in different counties, the plaintiff shall have his

Actions against parties residing



option to institute his suit in either of the said counties, and the clerk shall issue the original petition and process, and a copy or copies in such county, against the defendant or defendants who may reside therein, in manner directed by this act; and shall also issue another original and copy or copies thereof, for the defendant or defendants resident in other county or counties. And it shall be the duty of the plaintiff, his agent or attorney, to cause such original and copies to be delivered to the sheriff, or other officer, in such other county or counties, who shall execute and return the same to the court from whence they issued, in such manner as is herein-before directed, and on such return, the plaintiff may proceed as in other cases.

AN ACT to explain and enforce the Judiciary act of 1799, as respects Special Pleadings in the several courts of law in this State.—*Approved Dec. 19, 1818.*

*Whereas*, the said Judiciary was intended for the purpose of bringing parties litigant, to a speedy judicial decision, without delay and with as little costs as practicable. And it was thereby intended, that the small omissions of parties, clerks or sheriffs, not affecting the real merits of the cause, should in all cases substantially set out, be amended on motion without delay or costs. And it having grown into practice in said courts, to give or grant a term, and sometimes non-suit, for the smallest omissions of the officers of the said courts; and as a further increase of the said practice may lead us back to all that tedious and expensive labyrinth of special pleadings which the said judiciary intended to avoid—

84. SEC. I. *Be it enacted, &c.*, That in every case where there is a good and legal cause of action, plainly and distinctly set forth in the petition, and there is, in substance, a copy served on the defendant or defendants, or left at their most notorious place of abode, every other objection shall be, on motion, amended without delay or additional costs. *[See. 88 and 112.]*

85. SEC. II. No special pleadings shall be introduced or admitted in either the superior or inferior courts of this State, (other than in equity;) which shall be conducted in the same manner as is already pointed out by the judiciary system of this State now in force. And that every case shall be carried to the jury and tried, upon the petition, process and answer alone, without regard to the practice, now grown into use in the several courts of law in this State. And no non-suit shall be awarded when the cause of action is substantially set forth in the declaration, for any formal variance between the allegation and proof.

86. SEC. III. No part of an answer shall be stricken out, or rejected, on account of being contradictory to another part of the same answer; but the court shall be bound to suffer the whole answer to remain, if the defendant should desire it, and avail himself of any advantage he can or may have under either, or the whole, of the said answer, and proceed to trial accordingly.

### *Declaration.*

STATE OF GEORGIA, }  
Houston County. } To the *Superior Court* of said County.

The Petition of *John Doe*, showeth that *Richard Roe*, of said County, is indebted to your Petitioner, the sum of *five hundred dollars*, besides interest: for that whereas, the said *Richard Roe*, on the *first day of May*, in the year of our Lord eighteen hundred and *fifty-eight*, made



his certain *Promissory Note*, and then delivered said *Promissory Note* to one *Charles Smith*, (which is here in Court to be shown;) whereby, *ten days* after date of said *Note*, the said *Richard Roe* promised to pay said *Charles Smith*, or bearer, the sum of *five hundred dollars*, for value received. And the said *Charles Smith*, to whom said *Note* was made payable, afterwards, to wit, on the day and the year first aforesaid, duly endorsed and delivered said *Note* to your Petitioner, in a fair course of trade and for a valuable consideration. By reason whereof, the said *Richard Roe* became liable to pay your petitioner the aforesaid sum of money, according to the tenor and effect of said *Note*. And being so liable, in consideration thereof, afterwards, to wit, on the day and year first aforesaid, said *Richard Roe* undertook to pay your Petitioner the same, according to the tenor and effect of said *Note*. Yet the said *Richard Roe* although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay has heretofore *wholly* refused, and still does refuse, to the damage of your Petitioner *one thousand dollars*. Wherefore, your Petitioner brings suit and prays Process may issue, requiring the said *Richard Roe*, personally or by attorney, to be and appear at the next *Superior Court* to be held in and for said County, to Answer your Petitioner in an action of *Assumpsit*, etc.

JAMES A. PRINGLE, *Pl'ff's Att'y*.

*Form of a Declaration of second or subsequent Endorser, against Maker and first Endorser, on a Note not Bankable.*

For that whereas, the said C D, heretofore, to wit, on the *first day* of *May*, in the year 1859, made his certain *Promissory Note* in writing, bearing date the day and year aforesaid, and thereby, then and there, promised to pay *two months* after the date thereof, to one E. F, or order, the sum of *fifty dollars*, for value received; and then and there, delivered the said *Promissory Note*, to the said E. F. And the said E. F. to whom or to whose order, the payment of the said sum of money, in the said *Note* specified, was to be made, after the making of the said *Note*, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, endorsed the said *Note*, by which said endorsement, he the said E. F, then and there ordered and appointed the said sum of money in the said *Note* specified, to be paid to your Petitioner; and then and there delivered the said *Note* to your Petitioner, for a valuable consideration. By means whereof and by force of the statute, in such case made and provided, the said C. D. and the said E. F, Defendants, as aforesaid, then and there became liable to pay to your Petitioner, the said sum of money in the said *Note* specified, according to the tenor and effect of the said *Note*. And being so liable, they the said Defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook, and then and there, faithfully promised to pay to your Petitioner, the said sum of money, in the said *Note* specified, according to the tenor and effect thereof. Yet your Petitioner avers, etc. etc.



*Endorsement by the Clerk.*

Filed in Office, this *March 5*, 1859.

WILLIAM H. MILLER, *Clerk.*

*Process annexed by the Clerk.*

STATE OF GEORGIA. }

*Houston County.* }

*To the sheriff of said County—Greeting.*

JOHN DOE }

*vs.* }

RICHARD ROE. }

*Assumpsit* in the *Superior Court* of said County.

The Defendant is hereby notified and required, personally or by attorney, to be and appear at the next *Superior Court*, to be held in and for said County, on the *fourth Monday in April* next: then and there to Answer the Plaintiff's demand in an action of *Assumpsit*, as in default thereof, the Court will proceed as to justice shall appertain.

*Witness, the honorable Henry G. Lamar, one of the Judges of the Superior Courts of said State, this March 5, 1859.*

WILLIAM H. MILLER, *Clerk.*

*Return of the Sheriff.*

I have executed the within Writ by serving a copy thereof on the Defendant *personally*, this *March 5*, 1859.

MADISON MARSHALL, *Sheriff.*

## ANSWER OF THE DEFENDANT.

*Plea of Non Est Factum.*

JOHN DOE }

*vs.* }

RICHARD ROE. }

GEORGIA—HOUSTON COUNTY.

*Assumpsit* in the *Superior Court* of said County, *April Term, 1859.*

And the said Defendant, by his attorney *Thomas Felder*, comes and defends the wrong and injured, when, etc. and says, that he did not himself make the said *Note*, in the Plaintiff's Declaration described; nor did he authorize, instruct or direct any other person to make said *Note* for him. And of this he puts himself upon the country.

THOMAS FELDER, *Def't's Att'y.*

In person appeared before the undersigned, *Richard Roe*, Defendant in the above-stated suit, who being duly sworn, saith, that the facts contained in the foregoing *Plea*, are just and true as therein stated.

Sworn to and subscribed,  
before me, this *April 25*, 1859. }

*James Mack, J. P.*

RICHARD ROE.

*Plea to the Jurisdiction.*

JOHN DOE }

*vs.* }

RICHARD ROE. }

GEORGIA—HOUSTON COUNTY.

*Assumpsit* in the *Superior Court* of said County, *April Term, 1859.*

And the said Defendant, in his own proper person, comes and says



that this Court ought not to have or take further cognizance of the suit above stated, because he says, that at the time of the commencement of said suit, to wit, the *fifth* day of *March*, eighteen hundred and *fifty-nine*, the Defendant resided in the County of *Bibb*, in said State, and not in the County of *Houston*; or elsewhere, out of said County of *Bibb*; and this he prays may be inquired of by the Court.

RICHARD ROE.

*Richard Roe*, the Defendant in the above-stated case, in person appears before the undersigned, and makes oath and says, that the above Plea is true in substance and fact.

Sworn to and subscribed,  
before me, this *April* 25, 1859. }  
*James Mack, J. P.*

RICHARD ROE.

### *Plea of Misnomer.*

JOHN DOE } GEORGIA—HOUSTON COUNTY.  
vs. } *Assumpsit* in the *Superior* Court of said County.  
RICHARD ROE. } *April* Term, 1859.

And *William Roe*, against whom the Plaintiff hath exhibited his Writ by the name of *Richard Roe*, in his own proper person comes and says, that he is named and called by the name of *William Roe*; and by that name and surname hath always, since the time of his nativity, hitherto been named and called; without this, that he the said *William Roe*, now is, or at the time of exhibiting the said Writ, was or ever before had been named, or called by the name of *Richard*, as by the said Writ is supposed; and this, he the said *William Roe* is ready to verify and prove. Wherefore he prays judgment of the said Writ, and that the same may be quashed, etc.

WILLIAM ROE.

In person appeared before the undersigned, *William Roe*, and after being sworn saith, that the facts stated in the above Plea, are just and true.

Sworn to and subscribed,  
before me, this *April* 25, 1859. }  
*James Mack, J. P.*

WILLIAM ROE.

AN ACT to authorize amendments to be made instanter, in cases of Misnomer, in all Judicial Proceedings. And for other purposes.—*Approved, Feb. 22, 1850.*

Misnomer amended instanter. 87. SEC. I. *Be it enacted*, That from and after the passage of this act, all misnomers made in writs, petitions, bills or other judicial proceedings, on the civil side of the court, shall be amended and corrected instanter, without working any unnecessary delay to the party having made the same.

Omission of a party amended instanter. 88. SEC. II. In suits by or against partners, or when any two or more persons sue or are sued in the same action, and the name of any person who ought to be joined in such action as plaintiff or defendant, is omitted, on ascertaining the same, the omission shall be amended instanter.



*Plea of Infancy.*

JOHN DOE }  
*vs.* }  
 RICHARD ROE. } *Assumpsit in the Superior Court of said County.*  
*April Term, 1859.*

And the said *Richard Roe*, by *Thomas Felder*, his attorney, [or if the Defendant be still an Infant, say “by *James A. Pringle*, admitted by the Court, as Guardian of said *Richard Roe*, to defend for the said *Richard Roe* who is an Infant under the age of twenty-one years,”] comes and defends the wrong and injury, when, etc. and says, that the said *John Doe* ought not to have or maintain his aforesaid action against him, because he says, that the said *Richard Roe* at the time of making the several supposed promises and undertakings in the said writ mentioned, was an infant within the age of twenty-one years, to wit, of the age of *nineteen* years, and this he the said *Richard Roe* is ready to verify and prove: wherefore, he prays judgment, if the said *John Doe* ought to have or maintain his aforesaid action against him, etc.

THOMAS FELDER, *Def't's Att'y.*

AN ACT to make void the Contracts of Minors, with the exceptions therein stated.—*Approved Dec. 11, 1858.*

89. SEC. I. *Be it enacted*, That all contracts of minors, shall be absolutely void, except for necessities; and that no contract of a minor shall be good for necessities, unless the case, or cases, is or are such that the parent or guardian of such minor, shall refuse or fail, and does refuse and fail, to supply such minor with necessities; and the burden of proof, of which fact, shall be upon the party furnishing such necessities.

Supplying  
minors with  
necessaries,  
how recovered.

AN ACT more effectually to protect the interests of parties Plaintiffs, in suits commenced against Joint-Obligors or Promissors.—*Approved Dec. 19, 1823.*

90. In all cases which hereafter may be commenced against joint-obligors or promissors, and any one or more of the parties, defendants, may plead infancy, and such plea be sustained, the action shall not, as heretofore, abate, but the court shall award judgment, as in cases of non-suit, in favor of the party or parties so pleading, and permit the plaintiff to proceed against the other defendant or defendants to said suit, without further delay or costs.

Plea of infancy sustained, as to one or more of the defendants, action to proceed as to the others.

*Plea of the Statute of Limitation.*

GEORGIA—HOUSTON COUNTY.

JOHN DOE }  
*vs.* }  
 RICHARD ROE. } *Assumpsit in the Superior Court of said County.*  
*April Term, 1859.*

And for further answer in this behalf, the defendant says, that the Plaintiff ought not to have or maintain his aforesaid action against him, because he says, that he the said *Richard Roe*, [or if by an Executor or Administrator, say, “the said *Richard Roe*, deceased,”] did not at any time within six years, next before exhibiting of the said action of the said Plaintiff in this behalf, undertake or promise, in manner or form as the said Plaintiff hath thereof complained against him the said defendant. And this he is ready to verify and prove as this honorable Court may order and direct, etc.

JAMES A. PRINGLE, *Def't's Att'y.*



*Another Form.*—Because he says, that the supposed cause of action in the said writ mentioned, did not accrue to the said Plaintiff at any time within six years before the exhibiting of the writ of the said Plaintiff against him the said defendant in this behalf, in manner and form as the said Plaintiff hath thereof complained against him the said defendant. And this he is ready to verify and prove: wherefore, etc.

*Plea of set-off.*

GEORGIA—HOUSTON COUNTY.

JOHN DOE } *Assumpsit* in the Superior Court of said County.  
                   <sup>vs.</sup>  
 RICHARD ROE. } *April Term, 1859.*

And for further Answer in this behalf, as to all the said several supposed promises and undertakings in the Plaintiff's declaration mentioned, *except as to the sum of fifty dollars* parcel, etc. the said defendant by leave of the Court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that the said Plaintiff before and at the time of the institution of the action of the Plaintiff against the Defendant, in this behalf, was and from thence hitherto hath been and still is indebted to the Defendant in a large sum of money, to wit, the sum of *one hundred dollars* (here state fully and at large the subject matter of the set-off, whether it be Bond, Note or Account, etc.) Which said sum of money so due and owing from the Plaintiff to the Defendant, exceeds the damages sustained by the Plaintiff, by reason of the non-performance by him the said Defendant of the several supposed promises and undertakings in the said writ mentioned, except as to the sum of *fifty dollars*, parcel, etc. And out of which said sum of money, so due and owing, from the Plaintiff to the Defendant, he the said Defendant is ready and willing and hereby offers to set-off and allow to the Plaintiff the full amount of said damages, except as aforesaid, according to the form of the statute in such case, made and provided. All this, he the Defendant, is ready to verify and prove: wherefore, he prays judgment if the Plaintiff ought to have or maintain his aforesaid action against him, etc.

THOMAS FELDER, *Def't's Att'y.*

AN ACT to enable Defendants in actions at common-law, to give in evidence, a Partial Failure of the Consideration of the Contracts upon which such action may be brought.—*Approved Dec. 26, 1836.*

Partial failure of consideration may be pleaded. 91. SEC. I. From and after the passage of this act, whenever any action or actions shall be commenced at common-law, founded upon any contract or contracts, it shall and may be lawful for the defendant or defendants to such action or actions, upon the trial thereof, to give in evidence to the jury, that the consideration or considerations, upon which said contract or contracts, are or were founded, have partially failed. Any thing in any law or custom, to the contrary notwithstanding: *Provided*, that such plea of partial failure shall only be pleaded in such cases, under such circumstances, and between such parties, as would now admit and allow the plea of total failure of consideration.

When plea allowed.

SEC. II. [Repeals conflicting acts.]



*Plea of Partial Failure of Consideration.*

JOHN DOE } GEORGIA—HOUSTON COUNTY.  
 vs. }  
 RICHARD ROE. } *Assumpsit* in the *Superior* Court of said County.  
*April* Term, 1859.

And for further answer in this behalf the Defendant saith, that the consideration for which the *Note*, the subject-matter of the Plaintiff's action, was given, has partially failed in this, to wit, for that the said *Note* was given for a certain *Negro Boy* named *Step*, of the age of *seventeen years*; which *Negro Boy*, the Plaintiff, by his Bill of Sale, dated the *first* day of *May*, in the year eighteen hundred and *fifty-eight*, sold and warranted to Defendant to be sound and well, (which Bill of Sale is here in Court to be shown.) And the Defendant avers that at the time of the sale of the said *Negro Boy* to him by the Plaintiff, and before, he was unsound and unwell, to wit, that said *Negro Boy* was and is accustomed occasionally to having *fits*. And Defendant avers that by reason of said *Negro Boy* being diseased, as aforesaid, he is greatly reduced in value, to wit, the sum of *five hundred dollars*: wherefore, Defendant says, that the consideration of said *Note* has failed to the amount of *five hundred dollars*, of which partial failure of consideration the Plaintiff, then and there, had notice. And this the Defendant is ready to verify and prove, etc.

JAMES A. PRINGLE, *Def't's Att'y*.

*Plea of Total Failure of Consideration.*

JOHN DOE } GEORGIA—HOUSTON COUNTY.  
 vs. }  
 RICHARD ROE. } *Assumpsit* in the *Superior* Court of said County.  
*April* Term, 1859.

And for further Answer in this behalf, the Defendant saith, that the consideration for which the *Note*, the foundation of the Plaintiff's suit, was given, has wholly and entirely failed, in this, to wit, for that said *Note* was given for the purchase of a certain *Negro Boy* named *Step*, about *seventeen years* of age; which *Negro Boy* the Plaintiff (by his Bill of Sale, here in Court to be shown, dated the *first* day of *May*, eighteen hundred and *fifty-eight*), sold and warranted to be sound and well: which said *Negro Boy* Defendant avers was, at the time of the purchase aforesaid, and previously, unsound and unwell, in this, to wit, that said *Negro Boy* is addicted periodically, that is, *monthly*, to having *fits*, which render him unserviceable. By reason whereof, said *Negro Boy*, was heretofore, and now is, of no value whatever to Defendant. Which failure of consideration the Plaintiff, then and there, had notice: and this the Defendant is ready to verify and prove, etc.

JOHN M. GILES, *Def't's Att'y*.

*Plea of Ne Unques Executor.*

JOHN DOE } GEORGIA—HOUSTON COUNTY.  
 vs. }  
 RICHARD ROE, } *Assumpsit* in the *Superior* Court of said County.  
*Ex'r of C. Smith, dec.* } *April* Term, 1859.

And for further Plea in this behalf, the Defendant says, that the Plaintiff ought not to have or maintain his aforesaid action against



him, because he says, that he, Defendant, never was *Executor* of the Will and Testament of *Charles Smith*, deceased; nor ever administered of the goods, chattels and estates, which were of the said *Charles Smith*, deceased, at the time of his death, as *Executor* of the Will and Testament of said *Charles Smith*, deceased, in manner and form as the Plaintiff hath in his said Writ, in this behalf, alleged, etc.

THOMAS FELDER, *Def't's Att'y.*

*Plea of Plene Administravit.*

JOHN DOE	}	GEORGIA—HOUSTON COUNTY.
<i>vs.</i>		<i>Assumpsit</i> in the Superior Court of said County.
RICHARD ROE, <i>Ex'r of C. Smith, dec.</i>		April Term, 1859.

And for further Plea in this behalf, the Defendant says, that the Plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that he, the Defendant, hath fully administered, all and singular, the goods, chattels and estates, rights and credits, which were of said *Charles Smith*, deceased, at the time of his death, and which ever come to the hands of the Defendant, as *Executor* as aforesaid, to be administered. And the Defendant further avers, that he hath not, nor on the day of the commencement of the action of the Plaintiff, in this behalf, or at any time since, had any goods or chattels or estates which were of said *Charles Smith*, deceased, at the time of his death, in his hands, as *Executor*, as aforesaid, to be administered. And this the Defendant is ready to verify and prove: wherefore, he prays judgment, if the said Plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

THOMAS FELDER, *Def't's Att'y.*

*Plea of Plene Administravit Præter.*

JOHN DOE	}	GEORGIA—HOUSTON COUNTY.
<i>vs.</i>		<i>Assumpsit</i> in the Superior Court of said County.
RICHARD ROE, <i>Ex'r of C. Smith, dec.</i>		April Term, 1859.

And for further Answer in this behalf, the Defendant, *Executor* of the Will and Testament of *Charles Smith*, deceased, saith, that said Plaintiff ought not to have or maintain his aforesaid action against him, except as to the sum of *one hundred dollars*, because he says, that he, the said Defendant, hath fully administered, all and singular, the goods, chattels and estates, which were of the said *Charles Smith*, deceased, at the time of his death, and which ever came to the hands of the Defendant, to be administered; except goods and chattels, rights and credits, of the value of *one hundred dollars*. And that he, the Defendant, hath not, nor on the day of the commencement of the action of the Plaintiff, in this behalf, or at any other time since, had any goods or chattels which were of the said *Charles Smith*, deceased, at the time of his death, in his hands to be administered, except said goods and chattels of the value aforesaid. And this he is ready to verify and prove: wherefore, he prays judgment, if the said Plaintiff ought to have or maintain his aforesaid action against him, except as to the sum of *one hundred dollars*, etc.

JOHN M. GILES, *Def't's Att'y.*



*Plea of the General Issue.*

JOHN DOE } GEORGIA—HOUSTON COUNTY.  
 vs. }  
 RICHARD ROE. } *Assumpsit* in the Superior Court of said County.  
*April Term, 1859.*

And now, at the term of the Court aforesaid, comes the Defendant in said case, by his attorney, *James A. Pringle*, and defends the wrong and injury, when, etc., and for Answer saith, that the said Plaintiff ought not to have or maintain his aforesaid action against the Defendant, because Defendant says, that he did not undertake and promise, in manner and form, as the Plaintiff, in his Writ, hath complained against him. And of this he puts himself upon the country, etc.

JAMES A. PRINGLE, *Def't's Att'y.*

*Note given in Evidence.*

*Ten days* after the date hereof, I promise to pay *Charles Smith*, or bearer, *five hundred dollars* for value received, this *May 1, 1858.*

RICHARD ROE.

*Verdict of the Jury.*

We, the jury, find for the Plaintiff the sum of *five hundred dollars* for his principal debt, with interest on that sum from the *eleventh day of May*, eighteen hundred and *fifty-eight*, and costs of suit.

MARCUS KUNZE, *Foreman.*

*Confession of Judgment by the Defendant.*

*April Term, 1859.* I confess Judgment to the Plaintiff for the sum of *five hundred dollars* principal debt, with interest from the *eleventh day of May*, eighteen hundred and *fifty-eight*, and costs of suit; reserving the right of appeal.

RICHARD ROE, *Def't.*

*Judgment of the Court.*

HOUSTON SUPERIOR COURT, *April Term, 1859.*

Whereupon, it is ordered, considered and adjudged by the Court here, that the Plaintiff do recover against the Defendant, the sum of *five hundred dollars*, for his principal debt. The sum of *forty dollars*, for his interest up to this date, and the sum of *fifteen dollars*, for his costs in this behalf, laid out and expended; and the Defendant in mercy, etc. Judgment signed this *April 25, 1859.*

THOMAS FELDER, *Pl'ff's Att'y.*

AN ACT to simplify and curtail Pleadings at Law.—*Approved Dec. 27, 1847.*

92. SEC. I. *Be it enacted*, That from and after the passage of this act, the form of a declaration for the recovery of real estate and mesne profits, may be as follows; (any law, usage, or practice, to the contrary notwithstanding,) to wit—



Form of action for Land and Mesne Profits. STATE OF GEORGIA, } *To the Superior Court for said County.* The Petition of A B, sheweth that C D, of said County, is in possession of a certain tract of Land, in said County, (*here describe the Land,*) to which your Petitioner claims Title. That the said C D, has received the Profits of said Land, since the                      day of 18   ; of the yearly value of                      dollars; and refuses to deliver the said Land to your Petitioner, or to pay him the profits thereof. Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next Superior Court, to be held in and for said County, to Answer your Petitioner's Complaint.

93. SEC. II. The form of an action for the recovery of Personal Property, may be as follows, to wit—

Form of action for Personal Property. STATE OF GEORGIA, } *To the Court of said County.* The Petition of A B, sheweth that C D, of said County, is in possession of a certain (*here describe the property*) of the value of                      dollars, to which your Petitioner claims Title. That the said C D, has enjoyed the Profits of the same since                      . That the said                      is of the yearly value of                      dollars. And that the said C D, refuses to deliver said                      to your Petitioner, or to pay him the Profits thereof. Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next                      Court to be held in and for said County, to Answer your Petitioner's Complaint.

94. SEC. III. The form of an action to recover money on a note, bill, bond, receipt, or written promise of any description; by adding a copy of which, with the endorsers' names, (if any,) and credits, shall be appended. (And when the suit is on a bond, the breach from which arises the right of action, shall be set out plainly,)—may be as follows, to wit—

Form of action on Note, Bill, Bond, etc. STATE OF GEORGIA, } *To the Court of said County.* The Petition of A B, sheweth that C D, of said County, is indebted to him in the sum of                      dollars, besides interest, on a                      dated                      , and due                      ; which the said C D refuses to pay. Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next                      Court for said County, to Answer your Petitioner's Complaint.

Oyer may be demanded, etc. *Provided nevertheless,* that when any defendant shall, at the appearance term of such cause, demand oyer of any note, bill, bond, receipt, or other instruments sued on, the plaintiff shall be compelled to produce the same to the defendant, for the purpose of examination.

95. SEC. IV. The form of an action on an account, may be as follows, to wit—

Form of action on an Account. STATE OF GEORGIA, } *To the Court of said County.* The Petition of A B sheweth that C D, of said County, is indebted to your Petitioner                      dollars, on an Account, as will fully appear by reference to a bill of particulars, hereunto annexed; which Account the said C D neglects to pay. Wherefore, your Petitioner prays Process may issue, requiring the said C D, to be and appear at the next                      Court, to be held for said County, to Answer your Petitioner's Complaint.

96. SEC. V. The form of an action to recover money on a judgment, may be as follows, to wit—



STATE OF GEORGIA, } *To the Court for said County.* The Pe- Form of ac-  
County. } titution of A B, showeth that C D, of said County, is tion on a  
indebted to your Petitioner dollars, besides interest, on a Judg- Judgment.  
ment obtained by your Petitioner, against the said C D, at a (*name the*  
*Court,*) Court, held on the day of 18 , in the  
(*County, District, or Town,*) of , in the State of ,  
as will fully appear by reference to an Exemplification of the proceedings  
in said case. That the said Judgment is unsatisfied, and that the said  
C D neglects to pay the same. Wherefore, your Petitioner prays Pro-  
cess may issue, requiring the said C D to be and appear at the next  
Court, to be held for the County of , then and  
there, to Answer the Plaintiff's Complaint.

97. SEC. VI. The form of an action for breach of warranty, on a deed,  
may be as follows, to wit—

STATE OF GEORGIA, } *To the Court of said County.* The Pe- Form of ac-  
County, } titution of A B, showeth that C D is indebted to him tion on  
in the sum of dollars; for that, on the day of Breach of  
, 18 , the said C D, executed to your Petitioner, a War- Warranty.  
rantee Deed, to a certain tract of Land, (*describe the Land,*) for the  
sum of dollars, paid by your Petitioner to the said C D.  
That your Petitioner has been evicted from said lot of Land, and the  
said C D, refuses to indemnify your Petitioner for his Damage in that  
behalf. Wherefore, your Petitioner prays Process may issue, requiring  
the said C D, to be and appear at the next Court, for said  
County, to Answer your Petitioner's Complaint.

98. SEC. VII. No departure from the before-prescribed forms, shall  
work a non-suit, provided the plaintiff shall plainly and distinctly set forth  
his cause of action. No non-suit  
allowed.

99. SEC. VIII. It shall and may be lawful, in pleading, to set out Figures may  
amounts and dates in figures, or what is sometimes called the Arabic be used.  
Numerals.

SEC. IX. All laws and parts of laws militating against this act, be and  
the same are hereby repealed.

AN ACT to curtail and simplify Civil Pleadings.—*Approved Jan .29, 1850.*

100. SEC. I. *Be it enacted,* That from and after the passage of this  
act, the form of an action for words, may be as follows, to wit—

STATE OF GEORGIA, } *To the honorable Court of said County.* Form of ac-  
County. } The Petition of A B, showeth that C D, of said tion for  
County, has injured and damaged your Petitioner, in the sum of Slander.  
dollars, by falsely and maliciously saying, of and concerning your Peti-  
tioner, on the day of 18 , the following false  
and malicious words, to wit:  
Wherefore, your Petitioner prays Process may issue, requiring the said  
C D, to be and appear at the next Court, to be held in and  
for said County, then and there to Answer your Petitioner's Complaint.

101. SEC. II. No plaintiff shall be non-suited for want of form, who  
shall set forth his cause of action as plainly and distinctly as the charge  
of slander is set forth in the form of declaration by the first section of this  
act prescribed. No non-suit  
for want of  
form.

AN ACT pointing out the mode of collecting a certain description of debts  
therein mentioned.—*Approved Dec. 19, 1848.*



Representative of deceased Obligor may be sued in the same action with the survivor.

After twelve months have elapsed.

102. From and immediately after the passing of this act, where any person shall be in possession, either in his own right, or in any other capacity, of any note, bill, bond, or other obligation in writing, signed by two or more persons, and one or more of the persons whose names are so signed as aforesaid, shall die before the payment of the money, or the compliance with the condition of such bond or other obligation in writing, the person or persons holding such note, bill, bond, or other obligation in writing shall not be compelled as heretofore, to sue the survivor or survivors alone, but may, at his, her or their discretion, sue the survivor or survivors, or the representatives of such deceased person or persons, or the survivor or survivors, in the same action with the representative or representatives of such deceased person or persons. Any law, usage or custom, to the contrary notwithstanding: *Provided*, nothing in this act shall be so construed as to authorize the bringing of any action, of any kind whatever, against the representative or representatives of any estate or estates, until twelve months after the probate of the will, or the granting of letters of administration on such estate or estates.

AN ACT to regulate the mode of prosecuting actions against Contractors and Co-Partners, in certain cases.—*Approved Dec. 18, 1820.*

In suits against Joint-Contractors or Co-Partners, judgment against party served.

What property may be levied upon.

*Whereas*, doubts have arisen as to the mode of prosecuting actions against joint-contractors and co-partners, when one or more cannot be found, or reside without the limits of this State, for remedy whereof—

103. *Be it enacted*, That from and after the passing of this act, that whenever two or more joint-contractors or co-partners, are sued in the same action, and a service shall be effected on one or more of the said joint-contractors or co-partners, and the sheriff, or other officer, serving the writ, shall return that the other defendant or defendants are not to be found, it shall and may be lawful for the plaintiff to proceed to judgment and execution against the defendant or defendants who are served with process, in the same manner as if he, she or they, were the sole defendant or defendants.

104. SEC. II. Judgments so obtained shall bind, and execution may be levied, on the joint or co-partnership property; and also, the individual property, real and personal, of the defendant or defendants, who have been served with a copy of the process; but shall not bind or be levied on the individual property of the defendant or defendants who are not served with process.

SEC. III. All laws and parts of laws repugnant to this act, are hereby repealed.

AN ACT to facilitate the recovery of Personal Property, in certain cases.—*Approved Dec. 24, 1827.*

*Whereas*, it frequently happens that suits in the different courts of law and equity in this State for personal property, continue for a number of years, and that after the commencement and before the end of said suits, the property in dispute increases, or has issue, which cannot be recovered in any other way than by resorting to a new action; for remedy whereof—

Issue subsequently born, may be recovered in the same action.

Declaration may be amended.

105. *Be it enacted*, That while any suit or action is now pending, or may hereafter be instituted, in any court of law or equity in this State, for personal property, the issue of said property born or to be born after the commencement of said suit or action, shall and may be recovered in the said suit or action. And it shall be the duty of the court to allow the declaration or bill to be amended at any stage of the said suit or action, so as to include the said issue so born or to be born. Any law, usage or practice to the contrary notwithstanding.



AN ACT to authorize Plaintiffs in Ejectment to recover such Mesne Profits as they may be entitled to in said action of Ejectment, by way of Damages; and to prevent a separate action for Mesne Profits.—*Approved Dec. 19, 1834.*

106. SEC. I. It shall be lawful for all plaintiffs in ejectment to add a count or counts in their writ of ejectment, and to submit evidence to the jury, and to recover by way of damages, all such sum or sums of money to which they may be entitled by way of mesne profits, together with the premises in dispute.

Count for Mesne Profits to be added in Declaration.

107. SEC. II. It shall be the duty of the several clerks of the superior courts, to incorporate in the execution of *habere facias possessionem*, a clause directing the sheriff to collect all such sums of money as, by the finding of the jury, shall have been awarded to the plaintiff in ejectment as mesne profits.

Count for Mesne Profits to be included in Writ of Possession.

108. SEC. III. No plaintiff or plaintiffs in ejectment, in cases which may hereafter be instituted, shall be permitted to have and maintain a separate action in their behalf, for mesne profits which have accrued, or may accrue, to him or them, from the premises in dispute.

No separate action for Mesne Profits.

109. SEC. IV. In case an action of ejectment be brought by the defendant in the first action of ejectment, for the premises recovered of him, and a verdict obtained in his favor, it shall be lawful for him to institute an action on the case for such damages as may have been collected from him as mesne profits in the first action; and under such action, it shall be lawful for him to give in evidence the verdict obtained by him in the second action; which shall be deemed and taken to prevent the judgment obtained in the first action, as operating an estoppel.

Action by Defendant in first action, for Mesne Profits, how brought.

### *Action of Ejectment.*

STATE OF GEORGIA, }  
Houston County. }

*To the Superior Court of said County.*

The Petition of *John Doe*, respectfully sheweth, that he has sustained damage of *Richard Roe*, of said County, the sum of *five thousand* dollars; for that the said *Richard Roe*, heretofore, to wit, on the *first* day of *January*, eighteen hundred and *fifty-five*, with force and arms, in said county, entered into a certain *lot of land*, with its appurtenances, to wit, number *forty-nine*, in the *tenth* district of said county, containing *two hundred two and a half* acres, more or less, (agreeably to original survey) one *hundred* acres of which are well improved; which *Charles Smith* had demised to your petitioner for a term which has not yet expired, and ejected Petitioner from his said *Farm*; and other wrongs and injuries, then and there did, to the great damage of Petitioner, and against the peace and dignity of said State. And thereupon, Petitioner by *James A. Pringle*, his Attorney, complains, that whereas the said *Charles Smith*, on the said *first* day of *January*, eighteen hundred and *fifty-five*, had demised the said *lot of land*, with its appurtenances, to Petitioner, to have and to hold the same, to Petitioner and *his assigns*, from the said *first* day of *January*, eighteen hundred and *fifty-five*, for and during and unto the full end and term of *ten* years, from thence next ensuing, and fully to be completed and ended. By virtue of which said demise, Petitioner entered into the said *lot of land* with its appurtenances, and became and was thereof possessed, for the said term so to him thereof granted. And Petitioner being so thereof pos-



sessed, the said *Richard Roe*, afterwards, to wit, on the *first day of January*, eighteen hundred and *forty-six*, with force and arms, &c., entered into the said *lot of land* with its appurtenances, which the said *Charles Smith* had demised to Petitioner, in manner and for the term aforesaid, which has not yet expired, and ejected Petitioner from his said *Farm*, and other wrongs and injuries to Petitioner, then and there did, to the great damage of Petitioner and against the peace of said State; wherefore, Petitioner saith that he is injured and hath sustained damage of said *Richard Roe* to the value of *four thousand* dollars.

And Petitioner avers that he hath sustained other and further damage of said *Richard Roe*, to the amount of *one thousand* dollars, for that the said *Richard Roe*, heretofore, to wit, on the *first day of January*, eighteen hundred and *fifty-six*, with force and arms, &c., broke and entered into *lot of land* number *forty-nine*, in the *tenth* district of said County, (with its appurtenances,) containing *two hundred two and a half* acres, agreeably to original survey, *one hundred* acres of which are well improved, and ejected and expelled, put out and amoved Petitioner from his possession and occupancy thereof, and kept and continued Petitioner so expelled and amoved for a long space of time, to wit, from the said *first day of January* in the year of our Lord eighteen hundred and *fifty-six*, until the day and year of the *institution of this action*, and still keeps Petitioner amoved and put out of the possession and occupancy of said *lot of land*; and during that time took and had, (and still takes and has,) and received to his own use and benefit, all the issues and profits of said *lot of land* with its appurtenances, being of great yearly value, to wit, of the yearly value of *two hundred* dollars: whereby Petitioner, during all the time aforesaid, not only lost the issues and profits of said *lot of land* with its appurtenances, but was deprived of the use and means of *cultivating* the same, and was forced and obliged to, and did necessarily, lay out and expend divers large sums of money, amounting in the whole to the sum of *five hundred* dollars, in and about the recovering of the possession of the said *lot of land* with its appurtenances; and other wrongs and injuries to Petitioner, then and there, did against the peace of said State, and to the damage of Petitioner *one thousand* dollars: wherefore, Petitioner brings suit and prays Process may issue, requiring said *Richard Roe*, personally or by Attorney, to be and appear at the Superior Court to be held in and for said County, on the *fourth Monday in April* next, then and there, to Answer Petitioner in an action of Trespass and Ejectment, and for Mesne Profits. And Petitioner will ever pray,  
JAMES A. PRINGLE, *Pl'ff's Att'y*.

NOTE.—The pleader will perceive that there is but one demise laid in the above Writ. Where there are more Conveyances than one, a separate and independent Demise should be laid upon each. When it is necessary to have more than one Demise in the Declaration, commence the second, third, &c., thus: “And whereas, also, the said *Richard Roe*, on the day and year first aforesaid, with force and arms, &c., entered into another *lot of land* with its appurtenances, to wit,” &c.

*Entry by the Clerk on the back of the Writ.*

Filed in Office, this *15th* day of *May*, 1859.

WILLIAM H. MILLER, *Clerk*.



*Process annexed by the Clerk.*

STATE OF GEORGIA, }  
 Houston County. }

*To the Sheriff of said County—Greeting.*

The Defendant *Richard Roe*, is hereby notified, personally or by Attorney, to be and appear at the next Superior Court, to be held in and for said County, on the *fourth* Monday in *April* next, then and there to Answer the Plaintiff's demand, in an action of Trespass and Ejectment, and for Mesne Profits, as in default thereof the Court will proceed as to justice shall appertain.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this May 15, 1859.

WILLIAM H. MILLER, *Clerk.*

*Service by the Sheriff.*

Served the defendant, *personally*, with a copy of this Writ. This May 16, 1859.

MADISON MARSHALL, *Sheriff.*

*Notice to Appear.*

PERRY, May 17, 1859.

*Mr. James Johnson*.:—I am informed that you are in possession of, or claim title to, the premises in the accompanying Writ of Trespass and Ejectment, and for Mesne Profits, mentioned, or some part thereof; and I being sued, in this action, as a casual ejector only, and having no claim, or title, to the same, do advise you to appear at the next term of the Superior Court to be held in and for the County of *Houston*, on the *fourth* Monday in *April* ensuing, by some Attorney of said Court, then and there; by Rule of the same Court, to cause yourself to be made Defendant in my stead; otherwise, I shall suffer judgment therein to be entered against me, by default, and you will be turned out of possession. Yours, &c.,

RICHARD ROE.

*Consent Rule.*

JOHN DOE  
 On the demise of Smith,  
 for lot of land number  
*forty-nine*, in the *tenth*  
 district of *Houston*  
 County,

*vs.*

RICHARD ROE,  
 Casual Ejector.

Trespass and Ejectment, and for Mesne Profits,  
*April* Term, 1859.

On the consent of the Attorneys for both parties, in the above case, it is ordered by the Court, that *James Johnson* be made Defendant in the stead and place of the now Defendant *Richard Roe*, and do, forthwith, appear at the suit of the Plaintiff, and forthwith, plead thereunto, not guilty; and upon the trial of the issue, confess lease, entry and ouster, and insist upon the title only; otherwise, let judgment be entered for the Plaintiff against the now Defendant *Richard Roe*, by default. And if upon the trial of the said issue, the said *James Johnson* shall not confess lease, entry and ouster, whereby the Plaintiff shall not be



withheld from the Plaintiff by the Defendant, whereof the Defendant able further to prosecute his writ against the said *James Johnson*, then no costs shall be allowed for not further prosecuting the same, but the said *James Johnson* shall pay costs to the Plaintiff, in that case to be taxed. And it is further ordered, that if upon the trial of the said issue, a verdict shall be given for the said *James Johnson*, or it shall happen that the Plaintiff shall not further prosecute, by said writ, for any other cause than for not confessing lease, entry and ouster, then the lessor of the Plaintiff shall pay to the said *James Johnson*, costs in that case to be adjudged.

JAMES A. PRINGLE, *Pl'ff's Att'y.*  
SAM'L D. KILLEN, *Def't's Att'y.*

### *Plea of the Defendant.*

JAMES JOHNSON, Def't. } *April Term, 1859. Trespass and Ejectment*  
vs. } and for Mesne Profits.  
JOHN DOE, on the } And the said Defendant, by *Samuel D. Killen*  
Demise of *Smith.* } his Attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the supposed Trespass and Ejectment, above laid to his charge, in manner and form as the said *John Doe* hath above thereof complained against him. And of this the Defendant puts himself upon the country, &c.

SAMUEL D. KILLEN, *Def't's Att'y.*

### *Verdict of the Jury.*

We, the Jury, find in favor of the Plaintiff, the premises in dispute. We further find the sum of *five hundred* dollars for Mesne Profits and the costs of suit.

WILLIAM H. TALTON, *Foreman.*

### *Judgment of the Court.*

Whereupon, it is considered by the Court here, that the Plaintiff do recover against the Defendant, *lot of land number forty-nine*, in the *tenth* district of *Houston County*, with its appurtenances, and that a Writ of Possession issue therefor, in favor of the Plaintiff. And it is further ordered, that the plaintiff do recover against the Defendant, the sum of *five hundred* dollars for Mesne Profits, and the further sum of *twenty* dollars for his costs in this behalf laid out and expended; and the Defendant in mercy may, &c. Judgment signed this *April 25, 1859.*

JAMES A. PRINGLE, *Pl'ff's Att'y.*

### *Habere Facias Possessionem—(Writ of Possession.)*

STATE OF GEORGIA, } *To the Sheriff of said County—Greeting.*  
*Houston County.* }  
JOHN DOE, on the } *Whereas, the Plaintiff has, lately in our Su-*  
Demise of *Smith,* } *perior Court for said County, by the judgment*  
vs. } *of said Court, recovered of the Defendant lot*  
JAMES JOHNSON, Def't. } *of land number forty-nine in the tenth district of said County, (with its*  
appurtenances,) containing *two hundred two and a half* acres, agreeably to original survey; which premises have been and are still, unjustly



is convicted, as appears to us of record. And for as much as it is adjudged in said Court, that the Plaintiff have execution upon his said judgment against the said Defendant, according to the force, form and effect of his said recovery; therefore, we command you, that without delay, you deliver to the Plaintiff, full and quiet possession of the said premises so recovered, with the appurtenances.

We also, command you, that of the goods and chattels, lands and tenements of the Defendant, in your County, you cause to be made the sum of *five hundred* dollars, which in our same Court, were adjudged to the Plaintiff as Mesne Profits of said premises, against the Defendant; and the further sum of *twenty* dollars for costs and charges, by the Plaintiff, in that behalf, expended; whereof the defendant is convicted as appears to us, of record. And have you those moneys before our said Court, on the *fourth* Monday in *October* next, to render unto the said Plaintiff for his damages aforesaid; and have you then and there, this writ.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

### *Return by the Sheriff.*

Executed the within Writ by putting the Plaintiff in quiet possession of the premises therein mentioned, on the *fifth* day of *May*, 1859. And have raised the sum of *five hundred* and *twenty* dollars, *by the sale of the Defendant's property*; which sums of money I have now in Court, subject to its order. *October 20, 1859.*

MADISON MARSHALL, *Sheriff.*

AN ACT to amend the Judiciary act of seventeen hundred and ninety-nine, so far as to perfect service, served in actions of Ejectment, for the recovery of Land and Mesne Profits. And to amend an act, entitled, "Complaint for the recovery of Real Estate and for Mesne Profits."—*Approved Feb. 20, 1854.*

*Whereas*, it frequently happens that an individual or individuals residing in one County, have their Plantations to extend over the County-line in an adjoining county. *And whereas*, there is no provision in the statute for the perfecting of legal process on such persons in actions of Ejectment or complaint—

110. *Be it therefore enacted*, That from and after the passage of this act, it shall be lawful for the clerk of the superior court of the county wherein such land may lie, to issue process in behalf of the plaintiff or plaintiffs, against the defendant or defendants; which process shall be directed to the sheriff, or if the defendant be a sheriff, it shall be directed to the coroner of the county wherein such land may lie, and such sheriff or coroner, as the case may be, shall be authorized to serve and return the same; and such process and service shall be as valid as if the same had been directed to and served by the sheriff or coroner of the county where such defendant or defendants may reside.

Where lands  
on both sides  
of County  
lines, how pro-  
cess to be serv-  
ed.

AN ACT to allow any Joint-Tenant, Tenant-in-Common, or other person having a part-interest in Lands or Tenements to maintain a separate action of Ejectment or Trespass, and for other purposes.—*Approved March 3, 1856.*



Joint Tenant,  
etc., may sue  
for injuries  
to joint prop-  
erty, without  
joining other  
parties inter-  
ested.

Who not af-  
fected by such  
judgment.

111. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be lawful for any joint-tenant, tenant-in-common, or other person having a part-interest in lands or tenements in this State, to have and maintain an action of ejectment or trespass, for the recovery of such lands or tenements, or injury thereto, without joining with him as plaintiff such other person or persons so interested: *Provided*, that the judgment rendered in all such suits shall in no way affect the rights of any such persons so interested in said lands or tenements, who are not parties to such suits.

AN ACT to change and simplify the Practice and Pleadings in this State; to provide for the service of Writs of *Scire Facias* in certain cases, and to regulate the admission of Testimony in certain cases.—*Approved Feb. 20, 1854.*

Amendments  
may be made  
at any time, as  
to form or sub-  
stance.

112. SEC. I. *Be it enacted*, That from and after the passage of this act, parties, plaintiffs and defendants, in the superior, inferior and corporation courts of this State, whether at law or in equity, may in any stage of the cause, as matter of right, amend their pleadings in all respects, whether in matter of form or matter of substance only; but in case the party applying for leave to amend pleadings, or to open a default, shall have been guilty of negligence in respect to the matter of amendment or default, the court may compel him to pay his adversary, the costs of the proceeding for which he moves, and may enforce other reasonable and equitable terms on him at discretion, not touching the real merits of the cause in controversy.

How absent  
defend't may  
be notified of  
making par-  
ties, in pend-  
ing suits.

113. SEC. II. That in all cases where a defendant duly served with process or subpoena, in any case at law or in equity, shall reside out of this State, or remove therefrom during the pendency of said cause, and the plaintiff or complainant shall die, his or her legal representatives may be made parties by *scire facias*, which *scire facias* shall be served by publication in some of the public gazettes of this State, once a month for four months, previously to the time [*term*] of the court to which said *scire facias* is made returnable; which publication, made by the sheriff or other executing-officer, shall be good and valid, to all intents and purposes.

Exceptions  
when to be  
made, to in-  
terrogatories,  
etc.

114. SEC. III. That [*on all appeal*] trials, or other trials in the last resort, all exceptions to interrogatories, the execution of commissions, commissioners, or answer of witnesses examined under commission (when the commission has been duly returned, and the same ordered or consented to be opened, and been for one day subject to inspection), shall be taken and determined before the case is submitted to the jury, otherwise the testimony shall be received, subject only to the objections that may be made for irrelevancy. All laws, usages and customs to the contrary notwithstanding.

AN ACT to prescribe the mode of perfecting service, and to regulate the proceedings in cases of *Scire Facias*, on non-residents.—*Approved Dec. 11, 1858.*

*Whereas*, it frequently happens that persons becoming bail for defendants remove from this State before judgment on *scire facias*, and there being no mode, by the laws of this State, to perfect service on such bail; for remedy whereof—

Non-resident  
Defendant  
how served  
with *Scire Fa-  
cias*.

115. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, writs of *scire facias* may be served, in all bail cases, on non-residents, by public notice in a newspaper (in which the sheriff's sales of the county are published) for thirty days.



116. SEC. II. That after such publication, the plaintiff in *scire facias* may proceed to judgment thereon, as if personal service had been made on the defendant in *scire facias*; and the cost of publishing said notice be taxed, in the bill of cost, against said defendant. Any law, usage or custom to the contrary notwithstanding. Cost how to be taxed, etc.

AN ACT to define and determine what stage of a suit at law shall be regarded the Commencement of Action.—*Approved Dec. 23, 1843.*

*Whereas*, conflicting opinions exist in the different Judicial Circuits of this State, in reference to what stage in the progress of a suit at law, is the Commencement of Action—

117. SEC. I. *Be it therefore enacted*, That from and after the passage of this act, the filing of the writ in office shall be regarded and considered the commencement of action: *Provided*, it shall be the duty of the clerk to enter on the declaration the time when said declaration is filed in office; to which entry said clerk shall sign his name. Time of filing the Writ commencement of Action.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to enable parties Plaintiff in suits commenced in the Superior and Inferior and other Courts of this State to Dismiss their Actions during the vacation of said Courts, on the same terms they are now authorized to Dismiss actions at the regular terms of said Courts.—*Approved Dec. 23, 1843.*

*Whereas*, inconvenience and delay frequently occur, by reason that parties Plaintiff who commenced suits in the Superior or Inferior and other Courts of this State, cannot dismiss their Actions, except at the regular terms of said Courts—

118. SEC. I. *Be it therefore enacted*, That from and after the passage of this act, parties plaintiff, who have commenced, or may hereafter commence suits in the superior, or inferior, and other courts of this State, be and they are hereby authorized to dismiss their actions during the vacation of said courts, on the same terms they are now authorized to dismiss actions at the regular terms of said courts: *Provided*, that such dismissal shall be first entered on the docket by the clerk of the court in which said suit may be pending, during the vacation of said court. Plaintiff may dismiss his suit in vacation. Clerk to enter dismissal.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to enable persons who have claims against Trust-Estates, to recover said Claims in a Court of Law, and to prescribe the manner in which the same shall be done.—*Approved March 5, 1856.*

119. SEC. I. When any person has any claim against any trust-estate for services rendered to said estate, or for articles, or property, or money furnished for the use of said estate; or when a court of equity would render said estate liable for the payment of said claims, it shall be lawful for such person to collect and enforce the payment of such claim in a court of law. Against trust-estate, recoverable in Courts of law.

120. SEC. II. The person having such claim, if the same exceeds the sum of thirty [*fifty*] dollars, may file his petition setting forth the grounds of such claim, and also, how and in what manner said estate is liable for the payment of said claim; and also, setting forth the name or names of the trustees and the *cestui-que-trust*. Which petition shall be filed in the office of the clerk of the superior or inferior court, under the same rules and regulations as in ordinary cases at common-law, and the subsequent proceedings, shall be in all respects, the same. How suit to be instituted.



- Extent of Judgment. 121. SEC. III. The judgment that may be rendered in said case, shall impose no personal liability on the trustee, or in any way render his property liable for the payment of the same; but said judgment shall only bind said trust-estate, and execution shall issue accordingly.
- Who made Defendant. 122. SEC. IV. If there is no trustee the *cestui-que-trust* shall be made the defendant, and the proceedings shall be in all respects, the same as when the trustee is the defendant.
- In justice's Courts. 123. SEC. V. When the claim does not exceed the sum of thirty [*fifty*] dollars, suit may be brought in a justice's court, under the same rules and regulations as in ordinary suits in those courts; saving only, that the summons shall set forth how and in what way, said trust-estate is liable for the payment of said claim. And the judgment rendered in justice's court shall have the same force and effect, as is herein-before prescribed in relation to judgments rendered in the superior and inferior courts.
- Force of Justice's fi. fa. 124. SEC. VI. All executions issued upon judgments rendered under the provisions of this act, shall specify in the body of the execution, the property on which the execution is to be levied, and it shall be levied on no other.
- On what fi. fa. to be levied.

SEC. VII. [Repeals conflicting laws.]

*Declaration, in the Superior or Inferior Courts.*

STATE OF GEORGIA, } *To the Superior Court of said County.*  
     Houston County. } The Petition of *John Doe* respectfully showeth, that *Richard Roe* (Trustee of *Mrs. Ann Sikes*, a married woman, of said County,) as Trustee, as aforesaid, owes to and from your Petitioner unjustly detains, the sum of *two hundred* dollars; for that said *Mrs. Ann Sikes*, for whom said *Richard Roe* is Trustee, has a separate interest and estate in a certain *Plantation* in said County, worked by said Trustee, for the exclusive benefit and advantage of said *Mrs. Ann Sikes*. And your Petitioner avers, that during the year eighteen hundred and *fifty-eight*, he furnished said *Richard Roe*, Trustee as aforesaid, for the use and benefit of the *Plantation* aforesaid, *four hundred bushels of Corn*, at and for the sum of *fifty cents per bushel*, as will appear by the annexed Bill of Particulars. And your Petitioner avers that said *Plantation* (and its appurtenances,) is liable to his claim. And your Petitioner avers, that said *Richard Roe*, Trustee as aforesaid, being so indebted as aforesaid, afterwards, to wit, on the *first* day of *January* eighteen hundred and *fifty-nine*, undertook and promised to pay your Petitioner said sum of money whenever thereunto afterwards requested; yet your Petitioner avers, that said *Richard Roe*, Trustee as aforesaid, although often requested has not paid said sum of money, or any part thereof, but the same to pay, hath hitherto neglected and refused, and does still neglect and refuse, to the damage of Petitioner *four hundred* dollars.

Wherefore, Petitioner brings suit and prays Process may issue, requiring said *Richard Roe*, Trustee as aforesaid, to be and appear at the next *Superior* Court to be held in and for said County, to answer your Petitioner in an action of *Assumpsit*, &c.

JAMES A. PRINGLE, *Att'y pro Pet'r.*



*Bill of Particulars.*

1859.

Jan'y 1. *Richard Roe*, Trustee of *Mrs. Ann Sikes*, . . . D'r.  
 To 400 bushels Corn, at 50 cts per. bushel,  
 furnished for the use of the *Plantation*  
 of said *Mrs. Ann Sikes*, in 1848. . . . \$200 00.

JOHN DOE.

AN ACT to abolish the right of Survivorship in Joint-Tenants, in this State.—*Approved Dec. 17, 1828.*

*Whereas*, it is doubtful whether the Right of Survivorship, as under the English law, does not still exist in this State, in all Estates of Joint-Tenancy—

125. *Be it enacted*, That from and after the passage of this act, when two or more persons shall hold and possess any estate of lands, in joint-tenancy, in this State, and one or more of said joint-tenants may depart this life, during the existence of said estate, the title or interest of the deceased joint-tenant, in said estate, shall not go and become the property of the surviving joint-tenant or tenants, as under the English law, but that the same shall be distributed as all other estates are, under the existing laws of this State. Survivorship between Joint-Tenants abolished.

All laws and parts of laws, militating against this act, are hereby repealed.

AN ACT to extend the provisions of the act to abolish the Right of Survivorship in Joint-Tenants, in this State.—*Approved Feb. 10, 1854.*

126. *Be it enacted*, That the provisions of the act passed on the seven-teenth of December, 1828, entitled “an act to abolish the right of survivorship in joint-tenants, in this State,” be and the same is hereby extended and made applicable to personal estate held in joint-tenancy. Survivorship in personal property.

## JUDGE OF THE SUPERIOR COURT.

AN ACT to alter the times, &c., and to amend certain parts of the act, entitled “an act to amend an act, entitled an act to revise and amend the Judiciary System of this State.”—*Approved Dec. 5, 1801.*

127. SEC. V. In all cases brought in the said superior courts, or either of them, where either of the judges thereof shall be a party, or interested therein, it shall be the duty of three or more of the justices of the inferior court, to preside at the trial of the same. Judge interested, Justices of the Inferior Court to preside.

AN ACT to authorize the Judges of the Superior Courts in this State to alternate in their districts.—*Approved Dec. 8, 1806.*

128. It shall and may be lawful for the judges of the superior courts in this State, and they are hereby authorized, to alternate in their districts, from and immediately after the first day of January next. Any law to the contrary notwithstanding. Judges may alternate.

AN ACT to compel the Judges of the Superior Courts of this State to convene at the Seat of Government in this State, once in each year, for the purpose of establishing uniform Rules of Practice, throughout this State.—*Approved Dec. 24, 1821.*

129. From and after the next election of judges of the superior courts of this State, that it shall be the duty of the said several judges, to con- Judges to establish Rules of Practice.



And notify absent Judges. vene at the seat of government of this State, once in each year, at such time as they, or a majority of them, may appoint, for the purpose of establishing uniform rules of practice throughout the several circuits of this State. And it shall be the duty of the judges so convened, to notify such of the judges who may be absent, of such rules, or alterations of rules, as may be established, as aforesaid.

AN ACT to annul and declare inoperative, all Rules of Practice, for the Superior and Inferior Courts of any Judicial Circuit, which have not been agreed upon and assented to by a majority of all the Judges of the Superior Courts, in Convention, for such purposes.—*Approved Dec. 29, 1847.*

*Whereas*, by a law of this State, the Judges of the Superior Courts are authorized to fix and establish Rules of Practice for all the Superior and Inferior Courts of this State. *And whereas*, a practice has grown up, within a few years past, of some of the Circuit Judges establishing Rules, without the assent and concurrence of their associates in office, thereby producing a want of uniformity in the Practice, an evil which requires legislative remedy—

Certain Rules of Practice declared null and void. 130. SEC. I. *Be it, therefore, enacted*, That all rules of practice for the superior and inferior courts, prescribed, or which may be prescribed by any other authority than that which has, by law, been deputed to all the judges of the superior courts of Georgia, in convention, be and the same are hereby declared to be null and inoperative.

Judges to suggest corrections in Penal Code. 131. SEC. XXXIII. It shall be the duty of the judges of the superior courts, to make a special report annually, to the governor of this State, previous to the meeting of the General-Assembly, and by him to be submitted to the legislature, of all such defects, omissions or imperfections in this code, as experience on their several circuits may suggest.—[*See Cobb's Penal Code, 197.*]

AN ACT to prevent [*the*] Judges of the several Superior Courts in this State, from making certain charges, or giving their opinions, to or in hearing of the Jury, and to define the same as Error.—*Approved Feb. 21, 1850.*

Judge must not express his opinion on facts of the case. 132. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall not be lawful for any, or either, of the judges of the several superior courts of this State, in any court, whether civil or criminal, or in equity; during its progress, or in his charge to the jury, to express or intimate his opinion, as to what has or has not been proved, or as to the guilt of the accused.

Error in Judge to violate this act, new trial awarded, etc. 133. SEC. II. Should any judge of said superior courts violate the provisions of the first section of this act, it shall be held by the supreme court for correction of errors in this State, to be reversed, and a new trial granted in the court below, with such directions as they may lawfully make.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to provide for the Election of all the Judges of the Superior Courts, by the free white people of the State of Georgia, and for other purposes therein named.—*Approved Jan. 12, 1852.*

Gen'l-Assembly not to appoint Judges. 134. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall not be lawful for the General-Assembly of this State, or either branch thereof, by joint-ballot or otherwise, to elect or

appoint, the whole or any portion of the judges of the superior courts of said State.

135. SEC. II. That in each judicial circuit or district in this State, an election shall be had and held for one judge of the superior courts of said district or circuit, in the order following, on the day and time herein-after specified; that is to say, for the Eastern, Middle, Northern, Western, Ocmulgee, Southern, Flint, Chattahoochee and Cherokee circuits or districts. Which said election for a judge of the superior courts, in and for the aforesaid circuits or districts, shall be had and held on the first Monday in October, in the year of our Lord eighteen hundred and fifty-three, and on the first Monday in October in every fourth year thereafter. And also, for the Coweta, South-Western, Macon and Blue-Ridge circuits or districts, there shall be had and held, in and for said circuits or districts, an election for a judge of the superior courts thereof, on the first Monday in October, in the year of our Lord one thousand eight hundred and fifty-five, and on the first Monday in October in every fourth year thereafter. Which said elections shall be opened, held, managed and conducted and closed, in the same manner and under the same rules and regulations, as are now or hereafter, may be prescribed by law for holding elections for members of the General-Assembly of this State. And all free white male persons, qualified by law to vote for members of the General-Assembly, shall be and they are hereby declared to be entitled and qualified to vote for one judge of the superior courts, in their several and respective judicial circuits or districts. But no one not a resident-citizen of the district or circuit for at least six months immediately preceding such election, shall be entitled to vote. And any person entitled to vote in one county may vote in any county, in such district.

Elections when and how conducted.

Who entitled to vote.

136. SEC. III. That the voters at said elections shall designate on each ticket or ballot the name of the person voted for as judge of each circuit or district. And the person having the highest number of legal and qualified votes shall be declared, as herein-after provided, to be elected judge of said circuit or district: *Provided*, he shall have the qualifications herein-after prescribed.

Elections to be by ballot.

137. SEC. IV. That the managers and superintendents of said elections, at the court-house and the several election-precincts in each county in said circuits or districts, or any one or more of them from each precinct, on the day after the election, shall meet together at the court-house of said county, and then and there count, compare, consolidate, add together, the returns to them produced by the managers or superintendents of the precinct-elections, and return and certify the same and the result thereof, within twenty days thereafter, to the governor of this State for the time being, under the same rules and regulations as are now or hereafter may be prescribed by law, in relation to the election of members of the General Assembly of this State, except as the same may be altered by the provisions of this act. And thereupon, it shall be the duty of the governor for the time being, within five days after the expiration of the aforesaid twenty days, together with the secretary of State, to compare, consolidate, count up, and add together, the legal votes cast or polled for each candidate from each county in said circuit or district, or from such as may have made returns, as herein-after required. And immediately thereafter, the governor shall issue his proclamation declaring the person having the highest number of legal votes polled in said circuit or district, and qualified as herein-after provided for, to be duly elected judge of the superior courts thereof; notifying and requiring said person so elected to appear before two or more justices of the inferior court of

Returns how consolidated, etc.

Duty of Governor and Secretary of State

Governor to issue his Proclamation.



the county in which he then resides, who are hereby authorized and required to administer to him, in writing, the usual oath of office, which said oath the clerk of the inferior court of said county shall enter and record on the minutes of said court, and transmit, under his hand and seal of office, if there be one, and if not, under his own seal, a certified copy thereof, to the governor, as soon as may be; and thereupon the governor shall cause the usual commission to be made out, issued and transmitted to the person so elected judge of the superior courts as aforesaid.

And Commission.

Who qualified to be a candidate for election.

138. SEC. VI. That no person shall be qualified for and eligible to the office of judge of the superior courts of this State who shall not have been a resident citizen of this State for ten years immediately preceding his election, and who shall not have been a resident inhabitant of the circuit or district in which he may be elected for at least one year next before his election, and who shall not have arrived at the age of thirty years, and who shall not have been duly admitted and licensed to plead and practise in the several courts of law and equity in this State (except the supreme court) five years, at least, prior to his election.

Person in office to remain until the qualification of successor.

139. SEC. VII. That each and all persons who now, or may hereafter at any time, hold a commission as judge of the superior courts of this State, shall continue to hold the same and perform the duties of said office until the expiration of the time for which he or they have been elected and commissioned, and until their successors shall be elected, qualified, and commissioned, in manner and form as herein-before provided for: *Provided*, that nothing in this act shall be so construed as to prohibit the judge of one judicial district from presiding and holding courts in any of the districts or circuits of this State, under such circumstances as have heretofore been customary and allowed by law.

Judges may alternate.

Vacancies how filled.

140. SEC. VIII. That in case of vacancies by death, resignation, or otherwise, the governor shall appoint until a new election is ordered and had, and the person elected is commissioned.

SEC. IX. That all laws and parts of laws militating against this act, and the true intent and meaning thereof, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to provide for the Election of all the Judges of the Superior Courts, by the free white people of the State of Georgia, and for other purposes therein named," approved January 12th, 1852.—*Approved Feb. 18, 1854.*

5th sec. act of 1852 repealed. Vacancy how filled, and at what times elections to be held.

141. SEC. I. *Be it enacted*, That from and after the passage of this act, the fifth section of said act is hereby repealed, and in lieu thereof, the following shall be adopted and enacted:—That whenever a vacancy occurs, or it shall so happen that there shall not have been any election or choice of a judge of the superior courts, in either or all of said districts or circuits, from any cause whatever, that then and in all such cases, it shall be the duty of the governor, to order a special election for a judge or judges, as the case may be, to fill such vacancy or vacancies; which said special election shall be held in all cases, on the next succeeding day for a general election in Georgia, whether on the first Monday in January, or the first Monday in October next thereafter, and at no other time: *Provided*, that in all cases the governor's proclamation shall be published for at least thirty days, next preceding said election days. And said judge or judges when so elected, shall hold their offices for the full term of four years, and shall be commissioned by the governor accordingly.

Term of office.

Certain vacancies not to be filled by election.

142. SEC. II. That when any vacancy occurs in the office of judge of the superior court, of any of the circuits of this State, by death, resignation or

otherwise, and the unexpired term for which the vacancy occurred, does not exceed the period of twelve months, the person appointed to fill said vacancy by his excellency the governor, shall hold said office for the unexpired term, and no election shall be ordered to fill said vacancy.

SEC. III. That all laws and parts of laws militating against this act, be and are hereby repealed.

AN ACT to fix the time of holding Elections for Judges of the Superior Courts, Attorney-General and Solicitors-General.—*Approved March 1, 1856.*

143. SEC. I. *Be it enacted*, That from and after the passage of this act, the regular elections of judges of the superior courts, attorney-general and solicitors general, shall be held on the first Monday in January. Time of Election of Judges Superior C'ts.

SEC. II. [Repeals conflicting laws.]

AN ACT to regulate the publication of Rules, Writs, Bills, Orders and Precepts of Court, relative to cases in Equity; to fix the cost thereof, and to amend certain defects in the Process of Writs, and to prescribe the time of filing Declarations in Attachments.—*Approved Dec. 20, 1838.*

144. SEC. II. When any process or writ shall bear test in the name of any judge of the superior courts of this State, who shall have died before the issuing the same, said writ or process shall not abate therefor, but the same shall at any time, be amended on motion, without delay or costs. Judge dying Process not to abate.

SEC. IV. [Repealing section.]

AN ACT to enlarge the powers of the Judges of the Superior Courts of this State, and for other purposes.—*Approved Dec. 3, 1842.*

145. SEC. I. *Be it enacted*, That from and after the passage of this act, the judges of the superior court in this State shall, severally, have the power to appoint temporarily, a clerk or sheriff in any county, in which there may be a vacancy in either of said offices, at the time provided by law for the holding of the said courts. Sheriff and Clerk may be appointed temporarily.

146. SEC. II. The sheriff so appointed shall only hold his office during the term of the court at which he was appointed. And the Clerk so appointed, by virtue of the authority aforesaid, shall hold his office during the term, and for four days thereafter. Tenure of the Officers thus appointed.

147. SEC. LIX. [The first part of this section, directing the annual Convention of the Judges of the Superior Courts, repealed in part and re-enacted in 1821.] And the said judges, or any of them, shall have power to perpetuate testimony, on such terms and in such manner as is usually practiced in courts of equity. Judges may perpetuate Testimony.

AN ACT to alter and amend the several acts now in force in relation to the taking of Sheriff's Bonds.—*Approved Dec. 26, 1845.*

148. SEC. I. From and after the passage of this act, it shall be the duty of the judges of the superior courts of this State, at the first sitting of the superior court, in any county in this State, after a sheriff shall have been elected and qualified for such county, to examine the official bond of such sheriff; and if the bond has been taken in conformity to the law, to cause the bond to be entered on the minutes of the superior court. And in case the bond has not been taken in conformity to law, it shall be the duty of the sheriff to give another bond in conformity to the law, which bond the judge is hereby authorized and empowered to take, and when so taken, shall be entered on the minutes of the superior court. Judge Superior Court must examine Sheriff's Bond, and order it entered, etc.

NOTE.—By special enactments, the Judges of the Superior Courts of the respective Circuits, are required to give in special charge, several Acts of the Legislature, on different



subjects, for which see Cobb's Penal Code, pp. 208, 9, 10, 11 and 12, and title Education, of this work. In addition to the above Acts the Judges are required, "at the first term of the Superior Court of each County, in each year, to give the Act, relating to the Poor-School Fund, in special charge, to the Grand Jury"—see title Education; and likewise, the Act "to provide for the Education of the Poor," *ib.*

The Judges are also required, "at the first sitting of the Superior Court, in any County in this State, after a Sheriff shall have been elected and qualified for such County, to examine the Official Bond of such Sheriff."

### CLERKS.

Duty of  
Clerks of the  
Superior and  
Inferior C'ts.

149. SEC. XXXIV. The clerks of the several courts in this State shall copy into a book of record, all the proceedings in all civil cases in said courts respectively; which entry of record shall be made within forty days after the determination of any cause. And the said clerks shall be allowed the sum of ten cents for every hundred words of recording such proceedings, to be taxed in the bill of cost. And the said clerks shall also, keep regular and fair minutes of all the proceedings in any of the said courts, which shall be signed by the judge of the superior, or presiding justices of the inferior courts, as the case may be, prior to the adjournment from day to day.

Must be sworn  
and give bond  
and security.

150. SEC. XXXV. The clerks of the said superior and inferior courts, hereafter to be appointed, shall before they enter upon the duties of their appointments and after being commissioned by the governor, take the following oath, before one of the judges of the superior courts, or a justice of the inferior court of the county—"I do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and other proceedings of the superior, or inferior, court of the county of ———; and all other matters and things which by law ought by me to be recorded. And that I will faithfully and impartially discharge and perform all the duties required of me, to the best of my understanding." And shall also, enter into bond, with one or more good and sufficient security or securities, to the governor for the time being, in the sum of \$3,000; conditioned for the faithful discharge of the duties required of them. And the said clerks shall, in virtue of their offices, be justices of the peace, so far as to administer all oaths appertaining to the business of their office.

Their Oath of  
Office.

May adminis-  
ter Oaths.

Not allowed  
to practice  
Law.

Same person  
Clerk of both  
Courts.

151. SEC. XXXVI. No clerk of a court, or other person employed in his office, shall act as attorney, in his own name or the name of any other person, or be allowed to plead or practice in such courts, during the time he shall be employed in such office. And the same person may be clerk of the superior and inferior courts of the same county: *Provided*, that nothing herein contained shall extend to prevent any officer of the court from prosecuting or defending any suit to which he is a party.

### Clerk's Bond.

STATE OF GEORGIA, ) We, *William H. Miller*, as principal, and  
Houston County. ) *Samuel Felder* and *William H. Talton*, as securi-  
ties, acknowledge ourselves held and bound to *Joseph E. Brown*,  
Governor of said State for the time being, and his successors in office,  
in the sum of three thousand dollars, subject to the following con-  
dition—

The condition of the above obligation is such—whereas, the above bound *William H. Miller*, was, on the *first* day of *January*, eighteen hundred and *fifty-nine*, elected Clerk of the *Superior Court* of the

County of *Houston*, in said State: now should said *William H. Miller*, well and truly do and perform, all and singular, the duties required of him by law, as Clerk as aforesaid, according to the trust reposed in him, then the above obligation to be void; otherwise, of force. This *January 10, 1859.*

Before us,

*John Ragin, J. I. C.*                      *WILLIAM H. MILLER, prin'l.* [L. S.]

*John D. Winn, J. I. C.*                  *SAMUEL FELDER, sec'ty.* [L. S.]

*Charles Anderson, J. I. C.*          *WILLIAM H. TALTON, sec'ty.* [L. S.]

### *Deputy-Clerk's Bond.*

STATE OF GEORGIA, } We, *Thomas Killen*, as principal, and *Hugh*  
*Houston County.* } *Dennard and Drury W. Taylor*, as securities,  
 acknowledge ourselves held and bound to *William H. Miller*, Clerk of  
 the *Superior Court* of the County aforesaid, in the sum of *one thousand*  
*dollars*, subject to the following condition—

The condition of the above obligation is such—whereas, the above bound *Thomas Killen*, has *this day*, by *William H. Miller*, Clerk of the *Superior Court* of the County aforesaid, been appointed Deputy of the said *William H. Miller*: now, should the said *Thomas Killen* well and truly do and perform, all and singular, the duties required of him by law, as the Deputy-Clerk of the *Superior Court* of said County, according to the trust reposed in him, then the above obligation to be void; otherwise of force. This *January 10, 1859.*

Before us,

*John Regan, J. I. C.*                      *THOMAS KILLEN, prin'l.* [L. S.]

*John D. Winn, J. I. C.*                  *HUGH DENNARD, sec'ty.* [L. S.]

*Charles Anderson, J. I. C.*          *DRURY W. TAYLOR, sec'ty.* [L. S.]

NOTE.—The form of the Bond given by the Clerk of the Inferior Court is the same as that given by the Clerk of the Superior Court.—*mutatis mutandis.*

AN ACT to compel the Clerks to keep their offices at the Court-House of their respective Counties, or within one mile thereof.—*Approved Dec. 7, 1807.*

Whereas, great inconvenience has hitherto been experienced by the citizens of this State from the great distance at which many of the clerks keep their offices from the court-house; many records and other papers being frequently necessary to the fair investigation of a cause in court, that are lodged in the office, and their absence necessarily delaying justice, and sometimes utterly defeating it, for remedy whereof—

152. SEC. I. *Be it enacted*, That from and after the first day of June next, it shall be the duty of the clerks of the superior and inferior courts, and the clerks of the court of ordinary, to keep their offices, books and papers, at the court-house of their respective counties, or within one mile thereof, except the counties of Glynn, Effingham, Bryan and Bulloch; and except the county of Wilkinson, until the public buildings be made permanent.

Clerks to  
keep their  
Offices within  
one mile of  
Courthouse.

153. SEC. II. Each and every of the said clerks, except as before excepted, shall forfeit and pay the sum of \$30 for every month they, or either of them, shall fail to comply with the requisitions of this act, to be recovered in the superior court, on motion of the attorney or solicitor-general, by attachment as for contempt, and to be considered as a part of the county funds.

Penalty for  
neglect, and  
how enforced.



AN ACT to allow Clerks to appoint Deputies.—*Approved Dec. 19, 1817.*

*Whereas*, considerable inconvenience arises to the good citizens of this State, in consequence of the non-appointment of deputies by the clerks of the superior, inferior and corporation courts, and the courts of ordinary of this State; for remedy whereof—

Clerks may  
appoint Deputies.

Who go out  
with their  
principal,  
who is respon-  
sible for their  
acts.

154. *Be it enacted*, That immediately from and after the passing of this act, the said clerks shall be allowed to appoint a deputy or deputies, in the same manner and under the same rules and regulations as deputies of sheriffs are now by law appointed; who may continue in office during the term of his or their said principal or principals, unless specially removed: *Provided always*, that in case of the death, resignation or disability of the said principal clerk or clerks, the power and authority of the said deputy or deputies shall cease and determine. And that the said several principal clerks, shall in all cases, be responsible for the acts of each and every of their said deputies and agents.—[*See next Act.*]

AN ACT to legalize the acts of Deputy-Clerks of the Superior and Inferior Courts and Courts of Ordinary, under the age of twenty-one years.—*Approved Dec. 20, 1824.*

Acts of minor  
Deputies  
made legal.

Principal res-  
ponsible for  
acts of Depu-  
ty.

155. From and immediately after the passage of this act, all the acts heretofore done by the deputy clerks of the superior, inferior and courts of ordinary, in this State, under the age of twenty-one years, be and the same are hereby made as legal and valid as if such deputy clerks, at the date of such acts, had been twenty-one years of age: *Provided*, that nothing herein contained shall be construed to exempt the principal clerks from any liability their deputies may have incurred.

AN ACT requiring Clerks of the Inferior Courts of the several Counties of this State to record Constables' Bonds; and declaring certified copies thereof Testimony in certain cases.—*Approved Dec. 27, 1847.*

Constable's  
Bonds to be  
recorded by  
Clerk Inferior  
Court.

156. SEC. I. From and after the passage of this act, it shall be the duty of the clerks of the inferior courts of the several counties of this State, to record in a book to be kept for that purpose, all constables' bonds that may hereafter be returned into their and each of their respective offices by the magistrates before whom said bonds are executed, within twenty days after the same are so returned.

Certified copy  
evidence, un-  
less denied on  
oath.

157. SEC. II. In all causes which may hereafter be instituted in any of the courts of law or equity in this State, against the principal and securities, or either of them, on any official bond given by any constable in this State, it shall be lawful for the said courts to receive as evidence of the fact of the due execution of such bond, a certified copy thereof, made by the proper officer, when [*where*] such bond is of file or recorded; which copy shall be sufficient testimony in the cause, unless denied on oath.

SEC. III. [Repealing section.]

AN ACT to compel the Clerks of the Superior and Inferior Courts, and the Courts of Ordinary, of the several counties of this State, to buy a Seal of Office for each of said Courts.—*Approved Jan. 12, 1852.*

Clerks to pro-  
cure Seals.

Treasurer  
must pay for  
Seal.

158. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be the duty of the clerks of the superior and inferior courts and courts of ordinary of the several counties of this State, to buy a good and substantial Seal of Office, where there is not one already provided, for each of said offices; with the name of the county and court inscribed thereon. And said Seals shall be paid for by the several county treasurers, out of any funds in their hands belonging to the county. And receipts of said clerks for the

amount paid, shall serve as a proper voucher for said treasurers, in any settlement thereafter had with the county.

159. SEC. II. That if any of the clerks of the superior and inferior courts and courts of ordinary of the several counties of this State, shall neglect or refuse to buy a Seal of Office as required by the first section of this act, within six months after the passage of this act, said clerks or ordinary so failing or refusing shall be guilty of a misdemeanor, and on indictment and conviction in the superior court, shall be fined the sum of fifty dollars, one-half to the prosecutor and the other to county purposes. Clerk neglect-  
ing duty to  
be punished.

AN ACT to legalize the acts of certain Deputy-Clerks of the Superior Courts, Inferior Courts, and Courts of Ordinary of this State.—*Approved Jan. 12, 1852.*

*Whereas*, By the act of December 19th, 1817, the several clerks of the superior, inferior and corporation courts, and courts of ordinary of this State, are authorized to appoint deputies.

*And whereas*, it has been decided by some of the superior courts of this State, that all declarations, processes and other official papers, and instruments, signed by such deputies, are illegal and of no effect, for remedy whereof—

160. SEC. I. *Be it enacted*, That from and after the passage of this act, all writs, declarations, processes and other official instruments that have heretofore or may hereafter, be signed by any such deputy-clerk of the superior, inferior or corporation court, or court of ordinary, shall be as legal and binding to all intents and purposes, as if the same had been signed by such principal clerk. Any law, usage or custom to the contrary notwithstanding.—[*See 167.*] Papers exe-  
cuted by Dep-  
uty-Cl'k good.

AN ACT to alter and amend the 6th sec. &c. and to prescribe the mode of issuing *Scire Facias* in certain cases therein provided for.—*Approved Dec. 11, 1841.*

161. SEC. III. All *scire facias* hereafter to be issued for the purpose of making parties to any suit at law or equity, pending in the superior or inferior courts of this State, shall be issued by the clerk of said court; in which it shall be sufficient for said clerk to state the names of the parties, the term of the court to which said case was made returnable, and the name of the suit, or action; requiring the party to appear and show cause why he should not be made party to said cause; without setting forth the substance of the bill or declaration, or the proceedings had thereon, as heretofore practised. How *Scire Fa-  
cias* to make  
party may be  
formed.

SEC. IV. All laws and parts of laws militating against the provisions of this act, be and the same are hereby repealed.

### *Scire Facias to make parties.*

STATE OF GEORGIA,	}	<i>To all and singular the Sheriffs of the State of Georgia.</i>
Houston County.		
JOHN DOE	}	<i>Assumpsit</i> , returned to the <i>April</i> Term, of the
vs.		
RICHARD ROE.		<i>Superior Court</i> of said County, 1858.

*Whereas*, *John Doe*, Plaintiff in the above case died, pending said action of *Assumpsit*, and his death has been suggested of record. And *whereas*, *Charles Smith*, has been duly appointed *Administrator* of the Estate of said *John Doe*. Therefore, you are hereby commanded to



notify said *Charles Smith* to be and appear at the next term of said Court, to be holden on the *fourth* Monday in *October* next, to show cause why he should not be made party Defendant, in said action of *Assumpsit*, and said action proceed.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

AN ACT to define the duties of the Clerks of the Superior and Inferior Courts of this State, and Sheriffs.—*Approved Dec. 15, 1810.*

*Whereas*, a practice has prevailed in the superior and inferior courts of this State, for judgments to be kept open, notwithstanding the sheriff may have returned the execution or executions bottomed on such judgments satisfied. *And whereas*, great evil might grow out of such practice; for remedy whereof—

Satisfaction to be entered on Judgment. 162. SEC. I. *Be it enacted*, That from and after the first day of February next, it shall be the duty of such clerks, immediately after the return of such sheriff of such execution or executions, as the case may be, to enter such satisfaction on such judgment, either in whole or in part, as per sheriff's return.

Satisfaction Docket must be kept by Clerk. 163. SEC. II. It shall be the duty of such clerks to keep a docket-book for the special purpose of entering the names and stating the cases of parties, plaintiff or plaintiffs and defendant or defendants, and enter such satisfaction as aforesaid.

Subpœna Docket must be kept. 164. SEC. III. The respective clerks of the superior and inferior courts of this State, shall keep regular subpœna-dockets. And the said clerks of the superior courts shall also keep separate dockets for all criminal cases, which shall be entered in their regular order.

Sheriffs must keep Execution Docket. 165. SEC. IV. The different sheriffs in this State, shall keep fair and regular execution-dockets, wherein they shall enter all executions delivered to them, and the dates of such delivery, together with all their actings and doings thereon, and file the same in the clerk's office out of which such executions may have issued, on or before the first day of the meeting of the court to which they may be made returnable. Which said dockets shall remain in the said offices, subject to the inspection of all persons concerned therein.

Security paying of *fi. fa.* to have control of it. 166. SEC. V. Where it shall appear by the sheriff's return on any execution or executions, that the same has been paid by a security or securities, it shall be the duty of the clerk to make such entry in such docket-book, and such security or securities shall have the use and control of said execution for the purpose of remunerating him or themselves out of the principal for whom he or they stood security.

AN ACT to legalize and make valid any Process heretofore signed by Deputy-Clerks, or which may hereafter be signed by them.—*Approved Jan. 22, 1852.*

Process signed by Deputy-Clerk valid. 167. SEC. I. *Be it enacted*, That all processes which may have hitherto issued, or may hereafter issue from the superior and inferior courts of this State, signed by the deputy-clerk, either in his own name or that of the clerk, shall not be dismissed, but the said process shall be as sufficient in law as though the same had been signed by the clerk himself. Any law to the contrary notwithstanding.

## SHERIFF AND DEPUTY.

168. SEC. XLVI. The sheriffs of the several counties shall attend the superior and inferior courts in the respective counties when sitting, and by themselves or deputies, execute throughout the counties all writs, warrants, precepts and processes, directed to them, issued under the authority of any judge or justice of the said superior or inferior courts, or the clerk of either of the courts. And the said sheriffs or their deputies, shall have power to command all necessary assistance, in the execution of their duty; and to appoint, as there shall be occasion, one or more deputies. And before any sheriff shall enter upon the duty of his appointment, and being commissioned by the governor, he shall be bound for the faithful performance of his duty, by himself and his deputies, before any one of the said judges, to the Governor of the State for the time being, and to his successors in office, jointly and severally, with two good and sufficient securities, inhabitants and freeholders of the county, to be approved of by the justices of the inferior court, or any three of them, in the sum of \$20,000; and the said bond shall remain in the office of the clerk of the superior court of such county, and may be sued for by order of the said court, [see 201,] for the satisfaction of the public, or persons aggrieved by the misconduct of the sheriff or his deputy. And the said sheriff shall take and subscribe the following oath, before one of the judges of the superior or justices of the inferior courts, and the same shall be entered on the minutes of the said court, before such sheriff shall enter on the duties of his office, to wit: "I do solemnly swear (or affirm, as the case may be,) that I will faithfully execute all writs, warrants, precepts and processes, directed to me as sheriff of the county of \_\_\_\_\_, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of the office of sheriff of \_\_\_\_\_, during my continuance in office, and take only my lawful fees—so help me God." And an oath to the same purport shall be taken by each of the deputies of the said sheriff, in like manner.

Sheriff's Duty.

May command posse.

Must give Bond and Security.

Oath of Office.

Deputy must take Oath.

Where Sheriff dies Deputy acts.

169. SEC. XLVII. In case of the death of either of the said sheriffs, the deputy or deputies shall continue in office, unless otherwise specially removed, and execute the same in the name of the deceased, until another sheriff be appointed and qualified; and the defaults and misfeasance in office of such deputy or deputies, in the meantime, as well before as after the death of such sheriff, shall be adjudged a breach of the condition of the bond given as before directed, by the sheriff who appointed such deputy or deputies. And the executor or administrator of the deceased sheriff shall have the like remedy for the misconduct, or misfeasance, or default in office, of such deputy or deputies, during such intervals, as he would be entitled to if the sheriff had continued in life, and in the execution of his office, until his successor was appointed and sworn.

Ex'r or Adm'r of dec. Sheriff may have remedy against Deputy.

170. SEC. XLVIII. The sheriff of each county shall, at the expiration of his appointment, turn over to the succeeding sheriffs by indenture and schedule, all such writs and processes as shall remain in his hands unexecuted, who shall duly execute and return the same. And in case any sheriff shall neglect or refuse to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing, shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they shall sustain by reason of such neglect or refusal. And every sheriff, at the expiration of such his appointment, shall also deliver up to his successor, the custody of the jail and the bodies of such persons as shall be confined therein, with the precepts, writs, or causes of such detention. And such succeeding sheriff shall be empowered and required to sell and carry into effect any levy made by his predecessor

Sheriff must turn over to his successor all Office-Papers and unfinished business; successor must finish the same. Jail and Prisoners must be turned over.



Incoming  
Sheriff must  
finish the busi-  
ness of his  
predecessor.  
Sheriff's pow-  
ers and lia-  
bilities.

in office, in like manner as such sheriff could have done, had he continued therein; and shall make titles to the purchasers for all the property sold under execution and not conveyed by his predecessor.

Shall not  
Practice Law.

171. SEC. XLIX. The sheriffs of the several counties in this State, shall have like powers and authorities, and they and their under-sheriffs and jailors, constables and other officers belonging to the court, be liable to all actions, suits, penalties and disabilities whatsoever, which they or either of them may incur, for or on account of the escape of prisoners, or for or in respect of any other matter or thing whatsoever, relating to or concerning their respective offices, in the same manner as they have heretofore been liable by laws in force in this State. And no sheriffs, under-sheriffs, deputy or other sheriff's officer, shall act as an attorney-at-law, in his own name or in the name of any other person, or be allowed to plead or practice in any of the courts of this State, during the time he is in such office.

Subject to At-  
tachment or  
Action on the  
Case, for fail-  
ure to perform  
his duty.

172. SEC. L. The sheriff shall be liable either to an action on the case, or an attachment for contempt of court, at the option of the party, wherever it shall appear that he hath injured such party, either by false returns or by neglecting to arrest the defendant, or to levy on his property, or to pay over to the plaintiff or his attorney, the amount of any sales which shall be made under or by virtue of any execution, or any moneys collected by virtue thereof.

Liability for  
mal-practice  
in office.

173. SEC. LI. If any sheriff or his deputy or under-sheriffs shall be guilty of extortion or other mal-practice in the execution of his office, upon complaint made on oath to the State's attorney or solicitor, it shall be the duty of such attorney or solicitor to exhibit a bill of indictment against the person so offending, who upon conviction thereof, shall be fined by the court in treble the amount which he may have extorted from any person; which shall be applied, one moiety to the injured person and the other moiety to the use of such county, and shall likewise be removed from office, and suffer such other punishments as the law directs.

Liability in  
certain cases.

174. SEC. LII. Whenever the sheriff of any county within this State shall fail to make proper return of all writs, executions and other process put into his hands; or shall fail or neglect to pay up all moneys received on such executions on his being required by the court so to do, he shall be liable to an action as for contempt, and may be fined, imprisoned or removed from office, in the manner prescribed by the constitution.

### *Sheriff's Bond.*

STATE OF GEORGIA, } We, *Madison Marshall*, as principal, and *William Houston County*. } *H. Talton* and *Hugh Dennard*, as securities, all of said State and County, acknowledge ourselves held and bound to his Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of twenty thousand dollars, subject to the following conditions—

The conditions of the above obligation are as follows—whereas, said *Madison Marshall* has been *elected* Sheriff of said County: now, should the said *Madison Marshall* well and truly do and perform his duties as Sheriff of said County, by himself, Jailer and Deputy. And faithfully execute all Writs, Warrants, Precepts and Processes directed to him, as Sheriff, as aforesaid, for and during his term of office, and true returns make. And in all things, well and truly, without malice or partiality, perform the duties of said Office of Sheriff, by himself,

Jailer and Deputy, during his term of Office, and take only the fees prescribed and allowed by law. And faithfully perform, all and singular, the duties required of him as Sheriff as aforesaid, then the above obligation to be void; otherwise of force. This *January 10, 1859.*

Approved—

*John H. Ragin, J. I. C.*      MADISON MARSHALL, *prin'l.* [L. S.]  
*John D. Winn, J. I. C.*      WILLIAM H. TALTON, *sec'ty.* [L. S.]  
*Charles Anderson, J. I. C.*      HUGH DENNARD, *sec'ty.* [L. S.]

### *Deputy-Sheriff's Bond.*

STATE OF GEORGIA, } We, *Marcus Kunze*, as principal, and *William Houston County.* } *H. Miller* and *John S. Jobson*, as securities, acknowledge ourselves held and bound to *Madison Marshall*, Sheriff of said County, in the sum of *ten thousand* dollars, subject to the following conditions—

The conditions of the above obligation are as follows—Whereas, said *Marcus Kunze* has this day, by *Madison Marshall*, Sheriff of said County, been appointed Deputy to him, the said Sheriff: now, should said *Marcus Kunze* well and truly do and perform faithfully his duties as Deputy Sheriff of said County. And faithfully execute all Writs, Warrants, Precepts and Processes, directed to the Sheriff of said County, and which may come into his hands, for and during the time of his continuance in Office, and true returns make. And in all things well and truly, without malice or partiality, perform the duties required of him as Deputy-Sheriff, as aforesaid, and take only the fees prescribed and allowed by law. And faithfully perform, all and singular, the duties required of him as Deputy Sheriff, as aforesaid, then the above obligation to be void; otherwise, of force. This *January 10, 1859.*

Approved—

*James Mack, J. P.*

MARCUS KUNZE, *prin'l.* [L. S.]  
W. H. MILLER, *sec'ty.* [L. S.]  
J. S. JOBSON, *sec'ty.* [L. S.]

### *Deputy-Sheriff's Oath.*

STATE OF GEORGIA, } I, *Marcus Kunze*, Deputy-Sheriff of said  
*Houston County.* } County, do solemnly swear that I will faithfully execute all Writs, Warrants, Precepts and Processes which may come into my hands, directed to the Sheriff of said County, and true returns make; and in all things well and truly, and without malice or partiality, perform the duties of Deputy-Sheriff of said County, during my continuance in Office; and take only my lawful fees—so help me God.

Sworn to and subscribed,  
before me, this *January 10, 1859.* }  
*James Mack, J. P.*

MARCUS KUNZE.

NOTE.—By the Act of Dec. 11, 1841, Deputy-Sheriffs may be ruled in the same way that Sheriffs may be ruled; but this does not relieve the Sheriff from responsibility.

The same Act provides that when the Sheriff, or his Deputy, is a party to a Rule, or interested therein, and there be no Coroner, or other lawful officer of said County to execute the same, it shall be the duty of the Court to appoint, *pro tempore*, a special officer, for the purposes of executing the Rule, etc.



AN ACT to regulate the appointment of Jailers, and to alter and explain another act.—*Approved Dec. 16, 1811.*

Bond and  
security must  
be given  
by Jailer.

Jailer's Oath  
of Office.

175. SEC. I. In future all sheriffs, on appointing a keeper of the jail, to [shall] require sufficient security of him or them. And such person appointed, shall before he enters on the duties of his or their office, take and subscribe the following oath, before some one of the justices of the inferior court of said county, to wit: "I, A B, do solemnly swear, (or affirm, as the case may be,) that I will well and truly do and perform, all and singular, the duties of jailer for the county of ——. And that I will humanely treat all criminals who may be brought to jail, of which I am the keeper; and not suffer them to escape by any negligence or inattention of mine—so help me God."

### *Jailer's Bond.*

STATE OF GEORGIA, } We, *John Doe*, as principal, and *Richard Roe*,  
Houston County. } and *Charles Smith*, as securities, acknowledge  
ourselves held and bound to *Madison Marshall*, Sheriff of said County,  
in the sum of *ten thousand* dollars, subject to the following conditions—

The conditions of the above obligation are as follows—whereas, the above-named *John Doe*, has this day, by the Sheriff aforesaid, been appointed Jailer of said County: now, should said *John Doe*, well and truly, do and perform, all and singular the duties required of him as Jailer of the County aforesaid; and humanely treat and securely keep, all Criminals and other persons, brought to the Jail of said County, by lawful warrant and authority, and not suffer them to escape by negligence or inattention, then the above obligation to be void; otherwise, of force. This *January 10, 1859.*

Approved—  
*James Mack, J. P.*

JOHN DOE, *principal*, [L. S.]  
RICHARD ROE, *security*, [L. S.]  
CHARLES SMITH, *security*. [L. S.]

AN ACT to alter and amend the ninth section of the Judiciary Act of 1799, and the first section of an act relative to Executions, passed Dec. 14, 1811.—*Approved Dec. 22, 1840.*

Additional  
Fees allowed.

176. SEC. IV. When said process or execution shall be served or levied by a sheriff out of his own county, that the sheriff, so serving and returning the same, shall receive in addition to the fees established by law, for such service or levy, the sum of two dollars.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to make valid the Bonds taken by the Sheriffs of this State, and their Deputies, Coroners and Constables, from Defendants in Execution, for the delivery of property levied on by them.—*Approved Dec. 21, 1829.*

Forthcoming  
Bonds declar-  
ed legal.

177. From and after the passing of this act, all bonds taken by the sheriffs of this State or their deputies, or coroners, or constables, from defendants in execution, for the delivery of property (on the day of sale, or at any other time,) which they may have levied on by virtue of any *fi. fa.* or other legal process, from any court, be and the same are hereby declared to be good and valid in law, and recoverable in any court in this State having jurisdiction thereof.—[See 199.]

178. SEC. II. The bonds taken in conformity with the first section of this act, shall in no case prejudice or affect the rights of plaintiffs in execution, but shall relate to and have effect alone between the sheriffs, their deputies, the coroners and the constables, and defendants by whom given. And the sheriff shall in [no] case excuse himself for not having made the money on any execution by having taken such bond, but shall be liable to be ruled as now prescribed by law.

Forthcoming Bonds do not affect the rights of Plaintiffs.

AN ACT to prohibit Sheriffs and their Deputies from becoming directly or indirectly, Purchasers of property at their own sales; to vacate all Titles taken or held by them, for property so purchased, and to make penal the violation of this act; and to regulate their charges in certain cases.—*Approved Feb. 22, 1850.*

179. SEC. I. *Be it enacted*, That from and after the passage of this act, no sheriff or deputy-sheriff shall be permitted to purchase any property whatever, sold by himself; nor any sheriff, property sold by his deputy; nor any deputy-sheriff, property sold by his principal, or other deputy of said principal; either directly upon his own bid, or indirectly, upon the bid of any other person. And that every deed, and all deeds, intended to vest in any sheriff or deputy, a title to property purchased at such sales in violation of this act, whether made by such sheriff or deputy, or by any purchaser at such sale, shall be null and void.

Sheriff and his Deputy not to purchase at their own sales.

Deeds declared null and void.

180. SEC. II. Any sheriff or deputy-sheriff who shall violate the provisions of the first section of this act, shall be liable to be indicted as for a misdemeanor, and upon conviction shall be subject to fine, in the discretion of the court, or imprisonment in the common jail of the county for a term not exceeding six months, or both.

Guilty of misdemeanor and may be punished.

181. SEC. III. Whenever a sheriff or his deputy shall levy upon any negro property, he shall not be allowed to charge in any case, for feeding and keeping, or any other necessities, furnished such negro or negroes, in such cases where the services of such negro so levied on, have been applied to the use of said sheriff or his deputy, prior to the sale and pending the levy.

Slave levied on by sheriff, and employed by him, feeding not to pay for.

SEC. IV. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to authorize Sheriffs to perform the duties of their Office, in adjoining Counties, in certain cases herein defined.—*Approved Dec. 7, 1812.*

182. In all cases which require the official acts of a sheriff, wherein he is or may be a party in the case, and no coroner can be obtained in the county, to perform and execute the office of sheriff, that then and in that case, it shall and may be lawful for any sheriff in an adjoining county, to do and perform all manner of official acts that a coroner is authorized to do and perform in cases where the sheriff is a party interested.

Sheriff interested and no coroner, sheriff of adjoining county may act.

AN ACT requiring Judges to grant Rules Absolute against Sheriffs, in certain cases.—*Approved Dec. 11, 1841.*

*Whereas*, Sheriffs in this State frequently absent themselves from their courts for the purpose of preventing rules being taken against them, for failure to raise moneys on executions. And *whereas*, injury frequently accrues to plaintiffs in execution; for remedy whereof—

183. SEC. I. *Be it enacted*, That whenever a sheriff of any county in this State, absents himself from his court, that the presiding judge or judges, in all such instances, when required by plaintiffs in executions, or

Absenting sheriff may be ruled.



their attorney, shall grant rules absolute against said sheriff, unless it is proven at said term of the court, that the sheriff from sickness, is not able to attend said court. Any law or custom, to the contrary [*notwithstanding*.]

AN ACT to relieve Criminals and other persons confined in the Jails of this State.—*Approved Dec. 19, 1818.*

*Whereas*, criminals and other persons confined in the jails of this State, are exposed to unnecessary hardship and sufferance, from the want of medical aid, when sick; from the want of fire in cold weather, and from the want of clothes and blankets, and other comforts necessary to health; for remedy whereof—

Sheriff must  
furnish Pris-  
oners with  
medical aid  
and other nec-  
essaries.  
Fire.

Blankets.

Jail must be  
kept clean.  
Saving as to  
the Jail of  
Chatham  
County.

Sheriff neg-  
lecting his du-  
ty, to be fined.

Jailers' fees  
raised fifty per  
cent.

Inferior Court  
must pay  
charges.

484. SEC. I. *Be it enacted*, That it shall be the duty of the sheriffs of each county, whenever a criminal or criminals, or other person or persons, are confined in the jail of the county of which he is sheriff, to furnish or procure medical aid whenever the sickness of the person or persons confined in jail, require said aid. It shall also be the duty of the sheriff to furnish such person or persons so confined, with fire, whenever the form of the jail admits of the same and the coldness of the weather makes fire necessary to comfort and health. It shall also be the duty of the sheriff to furnish such person so confined, with a sufficient quantity of blankets and clothing, for the health and comfort of persons so confined: *Provided*, the person or persons so confined, have not the power of procuring blankets and clothing themselves. It shall also, be the duty of the sheriff to keep the jail of the county of which he is sheriff, in that state of cleanliness necessary to health: *Provided*, nothing contained in this act, shall be considered as arresting or taking from the corporation of the city of Savannah, the right and control over the jail of the county of Chatham, now exercised by them under a special act of this State.

185. SEC. II. If any sheriff should by negligence, permit any criminal or criminals, or other person or persons, confined in the jail of the county of which he is sheriff, to suffer in health for want of such medical aid, fire, blankets, clothes and cleanliness, as above pointed out, he shall be subject to indictment for such neglect, and upon conviction, shall be fined by the court, in a sum not more than five hundred dollars, which fine shall be paid to the clerk of the inferior court of the county, and made part of the county funds.

186. SEC. III. The jailers of the several counties of this State, shall be allowed to charge the sum of fifty per cent. on all charges heretofore allowed by law.

187. SEC. IV. Whenever the sheriff of any county shall have incurred any expense in the performance of his duty as above prescribed, he shall lay before the inferior court of the county of which he is sheriff, an account of the same; who shall pay the same out of any funds belonging to said county, in preference of all other claims upon said fund whatsoever.

AN ACT to compel Sheriffs and Coroners to deliver possession of Real Estate, sold by them under Executions, to the Purchaser, his or her agent, or attorney.—*Approved Dec. 23, 1823.*

Sheriff and  
Coroner must  
put Purchas-  
er of Real Es-  
tate in pos-  
session.

188. When any sheriff or coroner shall sell any real estate by virtue of and under the authority of any execution, it shall be the duty of such sheriff or coroner, as the case may be, upon application, to put the purchaser, his or her agent, or attorney, in possession of the real estate sold: *Provided*, that this act shall not authorize the officer making the sale to turn out any other person than the defendant in execution, his heirs or their tenants; if such other

person were in possession at the term [*time*] of the rendition of the judgment; or if such person has acquired such possession under the judgment of a court of competent jurisdiction, or claim under the person or persons acquiring such right, by the judgment of such court.

AN ACT pointing out the duty of Sheriffs, in selling Lands under Execution.

—*Approved Dec. 22, 1808.*

189. SEC. I. It shall hereafter be the duty of the sheriffs of the several counties in this State, when they levy any execution on land, to leave a written notice of the said levy with the owner, if in the county, or tenant in possession, if any; or transmit the same to him, her or them, in five days after such levy. Sheriff when he levies on Land must give written notice.

190. SEC. II. It shall not hereafter be lawful for any sheriff within this State, to levy upon or sell any land which lies out of the county of which he is sheriff. Any thing in any law, to the contrary notwithstanding.—[*See 193.*] Sheriff not to sell Land out of his County.

### *Sheriff's Notice of Levy.*

STATE OF GEORGIA, } To *Richard Roe*.—You are hereby notified  
*Houston* County. } and informed, that I have, *this day* levied an Execution, issued from the *Superior* Court of said County, in favor of *John Doe* against yourself, on lot of land number *forty-nine*, in the *tenth* district of said County, as your property. Said land will be advertised for sale on the *first Tuesday in July* next. This *May 1*, 1859.

MADISON MARSHALL, *Sheriff.*

AN ACT to alter and explain the first section of the Act of December 22, 1808.

—*Approved Dec. 16, 1811.*

191. SEC. II. The first section of the before-recited act shall not be so construed as to authorize any judge of the superior courts to order writs of possession to issue against a third person, residing within the limits of any such survey or tract of land so offered for sale: *Provided also*, that such person shall not be known in the suit on which such execution is founded, nor have been put in possession by or claimed under or by virtue of any conveyance from the defendant in such suit. Writs of Possession not to issue against third persons, strangers to the suit.

AN ACT to prevent Sheriffs and other officers from levying on and selling Growing Crops, except in certain cases.—*Approved Dec. 29, 1836.*

192. SEC. I. From and immediately after the passage of this act, no sheriff or other officer, shall hereafter levy on any growing crop of corn, wheat, oats, rye, potatoes, cotton, rice or any other crop usually raised or cultivated by the planters or farmers of this State; nor sell the same until the said crop or crops shall become matured or fit to be gathered: *Provided*, this act shall not prevent any of said officers from levying on and selling crops, as heretofore practised, when the debtor or debtors shall abscond or remove from the State or county; nor from selling growing crops with land. Growing Crop not to be separately sold. May be sold with the land, or when Debt- or absconds.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to enable Sheriffs or Coroners to sell tracts of land divided by a County-line.—*Approved Dec. 25, 1847.*

193. SEC. I. *Be it enacted*, That from and after the passage of this act, Land divided



by County-  
line may be  
sold.

where judgment shall be obtained against any debtor owning a tract or tracts of land, divided by a county-line or county-lines, it shall and may be lawful for the sheriff or coroner of the county to levy on and sell the whole of said tract or tracts of land, notwithstanding part of said tract or tracts of land may lie in counties of which he is not sheriff or coroner.

Lands owned  
by Debtor in  
other Coun-  
ties, divided  
by County-  
lines, may be  
sold.

194. SEC. II. Where any judgment-debtor shall own any tract or tracts of land, divided by a county-line or county-lines, and no part of such lands shall lie in the county [*of his residence,*] it shall and may be lawful for the sheriff or coroner of either county in which part of said tract or tracts of land may lie, to levy on and sell the whole of said tract or tracts of land.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to alter and amend an act passed 22d Dec., 1840, entitled "an act to alter and amend the 9th section of the Judiciary act of 1799, and the first section of an act relative to Executions, passed Dec. 14, 1811." And to provide for the enforcement of Judgment against land sold and Bond for Titles given.—*Approved Dec. 29, 1847.*

Executions,  
etc., against  
and in favor  
of Sheriffs,  
how directed,  
served and re-  
turned.

195. SEC. 1. *Be it enacted*, That the second section of the act, of which this is amendatory, be amended so as to read as follows; "SEC. 2. *And be it further enacted*, That all executions, orders, decrees, attachments for contempt, and all final process hereafter issued by the clerks of the superior and inferior courts, in favor of or against any sheriff of this State, shall be directed to the coroner of the county in which said sheriff may reside, and to all and singular the sheriffs of the State, except the sheriff of the county in which the interested sheriff may reside, which may be levied, served and returned by the said coroner or other sheriff, at the option of the plaintiff or party seeking to have the action of said officer or officers."

Sale of proper-  
ty where  
made.

Defendant  
where Im-  
prisoned un-  
der final pro-  
cess.

196. SEC. II. The third section of the act of which this is amendatory, shall be so amended as hereafter to read and be as follows: "SEC. III. *And be it further enacted*, That when a sheriff shall levy on property by virtue of any execution, directed and required by the second section of this act, as herein-before amended, said property shall be sold in the county in which the levy may be made. And that whenever any decree, order, *ca. sa.* attachment for contempt or final process, directed as required by the second section of this act, as now amended, shall be placed in the hands of any sheriff, and under and by virtue of said process, it shall become the duty, under the laws of this State, of said sheriff, to imprison any defendant or other delinquent, it shall be lawful for said sheriff to arrest the delinquent wherever found; and it shall be his duty to imprison him or her, either in the county where the arrest was made, or in the county where the arresting sheriff may reside, at the option of the plaintiff or other person so requiring the services of said sheriff.

Sale of land  
where Bond  
for Titles  
given.

Lien.

197. SEC. III. When any judgment has been or shall be rendered, in any of the courts of this State, upon any note or other evidence of debt, given for the purchase of land, where titles have not been made, but bond for titles given, it shall and may be lawful for the obligor in said bond, to make and file, and have recorded in the clerk's office of the superior court of the county, a good and sufficient deed of conveyance to the defendant for said land, and thereupon the same may be levied on and sold under said judgment, as in other cases: *Provided*, that the said judgment shall take lien upon the land prior to any other judgment or incumbrance against the defendant.

AN ACT for the relief of Sheriffs in certain cases.—*Approved Dec. 22, 1829.*  
*Whereas*, it is frequently oppressive upon sheriffs to serve and return

all writs and processes within the time prescribed by law; for remedy whereof—

198. *Be it enacted*, That from and immediately after the passing of this act, it shall not be necessary, as heretofore, for the sheriff's of this State, to serve all writs and processes at common law twenty days before the sitting of the court to which the same may be made returnable, but the same may be served and returned seventeen days before the sitting of the court: *Provided nevertheless*, that all writs and processes shall be copied and issued, as heretofore, twenty days before the sitting of the court to which the same may be made returnable. Any law, usage or custom to the contrary notwithstanding.—[See 206.]

Writs, etc., to be served 17 days before Court.

Must be copied 20 days before Court.

AN ACT to compel Coroners, Sheriffs and Constables to receive Securities on certain occasions therein expressed.—*Approved Dec. 16, 1811.*

199. SEC. I. In all cases where a levy is made on property which is claimed by a third person, and good and sufficient security is tendered by the party claiming the same, it shall be the duty of such sheriff, constable or coroner, to take security for treble the amount of the debt on which such execution is founded, for delivery of the property so levied on, at the time of sale, provided the property so levied on should be found subject to such execution. Then and in that case it shall be the duty of the sheriff, coroner or constable, to leave the same in the possession of such claimant; and in case the said claimant or security shall fail to deliver the property at the time and place of sale, agreeably to such bond, it shall be the duty of the officer taking the same, to transfer such bond to the plaintiff in execution; and said bond shall be recoverable in any court of law or equity in this State, having cognizance thereof.

Forthcoming Bond in Claim cases.

Property left with Claimant.

Bond to be transferred to Plaintiff.

AN ACT to fix the Fees of Sheriffs, Constables and Coroners in certain cases therein specified, and to provide for taxing the same.—*Approved Jan. 7, 1852.*

200. SEC. I. *Be it enacted*, That from and after the passage of this act, in all cases where the plaintiff or plaintiffs in attachment shall require any sheriff, or other levying officer of this State, to follow with any attachment any property which may be run out of the county in which such attachment may issue, such sheriff, or other levying officer, shall be allowed for such service the sum of five cents per mile in going and returning, to be taxed and paid as other costs, now provided by law.

Additional Fees for following property.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to alter, change and amend the forty-sixth section of an act to amend an act entitled an act to revise and amend the Judiciary system of this State, approved February 16th, 1799, so far as to dispense with an order of Court, before bringing suits on Sheriff's Bonds.—*Approved Feb. 7, 1854.*

201. SEC. I. *Be it enacted*, That from and after the passage of this act, the forty-sixth section of an act to amend an act, entitled an act to revise and amend the judiciary system of this State, approved February the 16th, 1799, be and the same is hereby altered, changed and amended, so far as to dispense with an order of court before bringing suits on sheriff's bonds, and that hereafter such order of court shall in no case be required.

Suit on Sheriff's Bonds without an order.



AN ACT to alter and amend the thirty-third section of an act, entitled "An act to revise and amend the Judiciary System of this State," passed 16th February, 1799, so far as relates to the hours of Sheriff's and Constable's Sales.—*Approved Dec. 21, 1821.*

*Whereas*, the hours of sheriffs' and constables' sales are thought to be too short, and attended with great inconvenience to the sheriffs and constables, and frequently to the injury of parties concerned; for remedy whereof—

Hours of sale. 202. *Be it enacted*, That from and after the passing of this act, the hours of sheriffs' and constables' sales will be from ten o'clock in the forenoon until four o'clock in the afternoon. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to define and point out the mode of service of Writs of *Scire Facias*.—*Approved Jan. 22, 1852.*

*Sci. fa.* how directed and served.

203. SEC. I. *Be it enacted*, That all writs of *scire facias* shall be directed "To all and singular, the Sheriffs of the State of Georgia." And copies thereof issued by the clerk of the court in which said *scire facias* is pending, may be served by the sheriff of the county in which the party to be notified may reside, and the original returned to the office of said clerk. And that an original and copy or copies may issue for each county in which any party to be notified may reside.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to prevent Sheriffs from holding the office of Constable.—*Approved Feb. 21, 1850.*

Sheriff not to act as Constable.

204. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, no city or county-sheriff shall be allowed to hold the office of constable.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend the Judicial Act.—*Approved May 11, 1803.*

*Whereas*, doubts have arisen respecting the proper persons authorized, or intended by law, to take the bonds or obligations of the Sheriffs of this State; for remedy whereof—

Who authorized to take Sheriff's Bonds, etc.

205. SEC. I. *Be it enacted*, That every judge of the superior, or a majority of the justices of the inferior courts, of the respective counties throughout this State, is and are, and by intendment of law, ought to have been taken, held, deemed and considered as competent in law, to take the bonds or obligations of sheriffs, and to qualify them as by law directed.

AN ACT to allow further time to Sheriffs and their Deputies, for the service of Writs, Process, Declarations and Bills in Equity.—*Approved Feb. 27, 1856.*

Time of serving Writs, etc., extended.

206. SEC. I. *Be it enacted*, That hereafter the sheriff and his deputy or deputies, in each and every county, shall be allowed five days after the time now fixed by law for filing bills of equity, and suits at common law, in the several superior and inferior courts of this State, for the purpose of serving all writs or declarations at common-law, or bills in equity. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to compel purchasers of Mortgaged property, purchasers of Life-Estates, or Estates-for-term-of-years, in Personal Property, at Sheriff's, Coroner's, or Constable's sales, to give Bond.—*Approved December 22, 1830.*

207. From and after the passage of this act, it shall be the duty of purchasers of personal property, under the incumbrance of mortgage or mortgages, at sheriff's, coroner's [or] constable's sale, to give bond and security to said sheriff, coroner or constable, in double the value of the property so sold, (of which the officer selling shall be the judge;) conditioned not to move said property out of said State, and deliver up the same to the mortgagee, his heirs or assigns, on demand made, after foreclosure of said mortgage or mortgages: *Provided*, the mortgagee, his agent or attorney, shall tender an affidavit, previous to the sale thereof, to the officer selling said property, stating that he, she, or they, are just and *bond fide* mortgagees thereof, and that he, she, or they, apprehend the loss of said property, unless bond be given in terms of this act.

208. SEC. II. When any person shall purchase, at any sheriff's, coroner's or constable's sale, a life-estate, or an estate-for-term-of-years, in personal property, it shall be the duty of said sheriff, coroner or constable, to require of said purchaser bond and security, as aforesaid, for the delivery of said property to the party entitled in remainder: *Provided*, the same is required by said party, his agent or attorney, who shall make affidavit of their right to said property, which shall be tendered to the officer selling previous to sale; which bonds, when taken, shall be filed in the clerk's office of the superior court of the county where said sale is made, subject to be sued on for the benefit and use of the said party, whenever the particular estate is determined; which said court shall have power, on sufficient cause shown, to compel said obligor to give additional security, from time to time, as justice may require, on ten days' previous notice being given.

209. SEC. III. On failure of said purchaser to give bond and security, as aforesaid, it shall be the duty of the said sheriff, coroner, or constable, to re-sell the said property, at the risk and loss of such purchaser.

SEC. IV. All laws or parts of laws militating against this act are hereby repealed.

### *Bond to return Mortgaged Property.*

STATE OF GEORGIA, ) We, *John Doe* as principal, and *Richard Roe* as  
Houston County. ) security, hereby acknowledge ourselves held and bound to *Madison Marshall*, Sheriff of said County, in the sum of *one thousand* dollars, subject to the following condition—

The condition of the above obligation, is as follows: whereas, said *John Doe*, purchased at the sale of said *Sheriff*, a certain *Negro boy* named *Charles*, sold as the property of *John Smith*. And whereas, *William Thomas*, claims to hold a Mortgage on said *Negro boy*: now, should said *John Doe* not move said *Negro boy* out of said State, and deliver up the same to said *William Thomas*, the Mortgagee, his heirs or assigns, on demand made after the foreclosure of the Mortgage of said *William Thomas*, then this obligation to be void; else, of force. This *May 1*, 1859.

Attest—  
*James Mack, J. P.*

*JOHN DOE*, principal, [L. S.]  
*RICHARD ROE*, security, [L. S.]

### *Affidavit of Mortgagee.*

STATE OF GEORGIA, ) Personally appeared before the undersigned, a  
Houston County. ) *Justice of the Peace* in and for said County, *William Thomas*, who being duly sworn, saith that he is the just and

Purchaser of  
Mortgaged  
property to  
give Bond and  
Security.

Mortgagee to  
tender Affida-  
vit.

Purchaser of  
Life Estate to  
give Bond and  
Security.

Party to make  
Affidavit.

Bond to be  
filed in Clerk's  
office.

Purchaser  
failing, Prop-  
erty to be re-  
sold.

1-CLERK TUNER



*bonâ fide* Mortgagee of a certain *Negro boy* named *Charles*, the property of *John Smith*. That said *Negro boy* has been levied upon by *Madison Marshall*, Sheriff of said County, by virtue of a *fieri facias* against said *John Smith*, and advertised to be sold on the first Tuesday in *May* next; and that deponent apprehends the loss of said *Negro boy* to answer said Mortgage, unless Bond be given in terms of the statute in such cases made and provided.

Sworn to and subscribed,  
before me, this *April 10*, 1859. }

*James Mack, J. P.*

WILLIAM THOMAS.

### *Bond of Purchaser of Life-Estate.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe* as  
*Houston County.* } security, hereby acknowledge ourselves held and  
bound to *Madison Marshall*, Sheriff of said County, in the sum of *one thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows: whereas, said *John Doe* purchased at the sale of said Sheriff a certain *Negro girl* named *Betsy*, sold as the property of *James Hall*, who held but a *Life-Estate* of said *Negro girl*, and which *Life-Estate* only was sold by said Sheriff. And whereas, *Willis Cason* claims to be Remainder-man to said *Negro girl*. Now, should said *John Doe*, well and truly, not move said *Negro* out of said State, and shall deliver said *Negro girl Betsy* to said Remainder-man, when said *Life-Estate* so purchased by him, is over and determined, then this obligation to be void; otherwise, of force. This *May 1*, 1859.

Attest—  
*James Mack, J. P.*

JOHN DOE, principal, [L. S.]  
RICHARD ROE, security, [L. S.]

### *Affidavit of Remainder-Man.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
*Houston County.* } Justice of the Peace in and for said County, *Willis Cason*, who being duly sworn, saith that he claims to be Remainder-man to a certain *Negro girl* named *Betsy*, in which *Negro girl James Hall* is possessed of a *Life-Estate*, which *Life-Estate* has been levied on as the property of said *James Hall*, and advertised to be sold, by the Sheriff of said County, on the first Tuesday in *May* next. And deponent further saith, that he apprehends the loss of said *Negro girl*, unless Bond be given in terms of the Statute in such case made and provided.

Sworn to and subscribed,  
before me, this *April 10*, 1859. }

*James Mack, J. P.*

WILLIS CASON.

### JURIES.

210. SEC. XXXVIII. The clerks of the superior courts of the respective counties, shall procure from the tax collector of such county, and furnish to the court, within two months, a list of persons liable and qualified to serve as grand and petit jurors, agreeably to the qualifications

List of Jurors  
how procured.

herein-after prescribed. And all free male white citizens, above the age of twenty-one years and under sixty years, [see 237,] are declared to be qualified and liable to serve as petit jurors for the trial of all civil causes for recovery of debts or damages, to any amount whatsoever. But no person shall be capable to be of a jury for the trial of treason, felony, breach of the peace or any other cause of a criminal nature; or of any estate of freehold; or of the right or title to any lands or tenements, in any court of record within this State, who shall not be qualified to vote at elections for members of the legislature. And if any person not qualified as aforesaid, shall be returned on any jury, he shall be discharged on the challenge and proof thereof, of either of the parties to such suit, or on his own oath of the truth thereof: *Provided*, that no exception against any juror, on account of his qualification, shall be allowed after he is sworn.

Qualification  
of Jurors.

No challenge  
after Juror is  
sworn.

211. SEC. XXXIX. The clerks of the several courts are required in presence or under the direction of the judge or judges of such court, to regulate and correct the several jury lists annually, by particularly specifying in distinct columns, the persons most able, discreet, and qualified, as herein mentioned, to serve as grand jurors. Which list so corrected, shall be committed to the safe-keeping of the clerks of such courts respectively; and the clerks of such courts shall immediately after receiving such lists, fairly enter the same in a book for that purpose, to be provided by such clerk, at his own expense, distinguishing in separate columns, the persons selected to serve as grand jurors, and those for the trial of civil and criminal causes as aforesaid. And the names of the persons so selected, shall be written on separate pieces of paper and put into the different apartments of a jury-box, to be provided by the clerk, at the public expense; in the construction and manner herein-after prescribed, to wit: there shall be an apartment in the said jury-box marked No. 1, in which shall be placed the names of all the persons selected to serve as grand jurors, and another apartment marked No. 2, into which shall be placed the names of all persons selected for the trial of civil and criminal causes as aforesaid; which box shall be kept locked; and no jury shall be drawn or impannelled but in the presence of one or more of the judges and clerk of the court. Nor shall any clerk of the court or other person having the custody of the jury-box, presume on any pretence whatsoever, to open the said jury-box, transpose or alter the names, except it be in the presence of the judge or justices, officially attending for the purpose of drawing jurors, or correcting the list, under penalty of being dealt with in the manner herein pointed out for mal-practice in office.

Manner of se-  
lecting Jurors.

Clerk's duty.

212. SEC. XL. The said judge or justices and clerk of the court, or person having custody of the key, shall previous to the adjournment of any superior court, or at least two months prior to the sitting of the next court, cause to be drawn out of the apartment of the said box marked No. 1, not less than twenty-three nor more than thirty-six names, as grand jurors. And out of the apartment marked No. 2, not less than forty-eight nor more than seventy-two names, as petit jurors, for the trial of civil and criminal causes, as aforesaid. Which names so drawn out, shall after an account is taken of them, at each term or time of drawing, be carefully rolled up again, and deposited in the two other apartments to be provided in such jury-box, marked Nos. 3 and 4, to wit: the names of the grand jurors in the division No. 3, and the names of the petit jurors in the division No. 4. And when all the names shall be drawn out of the apartments Nos. 1 and 2 aforesaid, they shall then commence drawing from the apartments Nos. 3 and 4, and return them into the [apartments] Nos. 1 and 2, and so on alternately.—[See 219.]

Manner of  
drawing Ju-  
ries.



Number of Grand Jury. 213. SEC. XLI. No grand jury shall consist of less than eighteen or more than twenty-three, but twelve may find a bill or make a presentment. And the names of the several jurors to be drawn as aforesaid, shall immediately after they are drawn out, be entered by the clerk on the minute-book of such court. And if it shall so happen, that from any unavoidable circumstance, the judge shall not attend at the time appointed for holding the superior court of any county, he shall nevertheless, attend in person for the purpose of drawing jurors, or shall transmit to the justices of the inferior court of such county, a request in writing, that they, or any two of them, attend at the clerk's office, on some convenient day, at least two months preceding the next term, for the purpose of drawing grand and petit jurors, in manner herein-before directed. And the said judges of the superior courts are declared to be responsible for the legal and regular drawing of juries, in the respective circuits in which they may reside. And in case of such unavoidable circumstance, specially stated by any judge of the superior court, the said justices, or any two of them, shall and are hereby required, to conform to such request, by attending and drawing juries, agreeably to this act.

Judges responsible for drawing Juries. J. I. C. to respect request of Judge to draw Juries.

Precept to be issued by the Clerk and delivered to the Sheriff. 214. SEC. XLII. The clerk of the court shall annex a pannel of the jury, containing the names of the persons drawn to serve on the grand inquest, exactly transcribed from the minute-book, to the precept for summoning such grand jury. And shall also, annex another pannel containing the names of the persons drawn as petit jurors, for the trial of civil and criminal cases, exactly transcribed as aforesaid, to the precept for summoning the petit jurors; in the mandatory part of which precept shall be written, the words following, viz.: "The several persons named in the pannel hereunto annexed." Which precept, with the several pannels annexed as aforesaid, shall be delivered by the clerk of the court, within three days after the drawing of such juries as aforesaid, to the sheriff of the county or his deputy.

Jurors to be summoned ten days before Court. 215. SEC. XLIII. The sheriff or his lawful deputy for the time being, upon the receipt of any precept for summoning grand or petit jurors, shall cause the several persons whose names are written in the pannel thereunto annexed, to be served with a summons, at least ten days before the sitting of the court for which they are drawn and empannelled. Which summons shall be in the following words, or words to that effect: "By virtue of the precept to me directed, you are hereby commanded to appear before the judge of the superior court, at the next superior court, to be held at the court-house, in and for the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at ten o'clock in the forenoon of that day, to be sworn on the grand jury, (or as a juror for the trial of civil and criminal causes, then and there depending," as the case may be.) Which shall be signed by the sheriff or his lawful deputy for the time being. Which sheriff or lawful deputy aforesaid, shall make return of all such precepts; in each of which he shall set forth the names of all such persons as shall have been summoned by virtue of such writs or precepts, and the time when they were summoned; and also, the names of the persons whom he may not have summoned, together with the reasons why they were not summoned, on pain of being fined by the court.

Form of Summons.

Sheriff must make return.

Clerk's duty. 216. SEC. XLIV. The clerk of the court shall make due entry in the minute-book of such court, of the appearance of all jurors; and shall likewise enter and make report of the names of all such as shall make default in appearing. That if any person who shall be drawn, impannelled, summoned and returned to serve as jurors, at any court as aforesaid, shall neglect or refuse to appear, or after appearance shall refuse to serve, or shall absent himself without leave of the court, then and in that case, it shall be lawful for the

Defaulting Jurors to be fined.

court to fine such person, if a petit juror, in a sum not exceeding twenty dollars, and if a grand juror, in a sum not exceeding forty dollars, unless such juror shall show good and sufficient cause of excuse, to be made on oath, before any justice of the peace, and filed in the clerk's office of such court, within thirty days after opening the said court; the merits of which excuse shall be determined by the next succeeding court. And when from challenge or otherwise, there shall not be sufficient number of jurors to determine any civil or criminal cause, the court may order the sheriff or his deputy to summon bystanders, or others qualified as herein-before required, for the trial of such cause or causes, sufficient to complete the pannel. And when the sheriff or his deputy are disqualified from acting in the manner herein expressed, jurors shall be summoned by the coroner, or such other disinterested person as the court may appoint.

Petit Juror \$20, Grand Juror \$40. Excuse may be made.

Talismen may be employed.

Sheriff disqualified, Coroner may act.

217. SEC. XLV. The oath to be administered to petit jurors in civil cases shall be in the form following: "You, (A. B.) shall well and truly try the cause depending between the parties at variance, and a true verdict give, according to evidence—so help you God."

Oath of Petit Jurors.

### *Precept for Summoning Jurors.*

STATE OF GEORGIA, }  
Houston County. } *To Madison Marshall, Sheriff of said County :*

You are hereby commanded and required to summon the several persons named in the Pannel hereunto annexed, to be and appear at the *Superior Court*, to be holden in and for said County of *Houston*, on the *fourth Monday in October* next, by ten o'clock in the forenoon of that day; then and there to be sworn as *Grand and Special* (or *Petit*, as the case may be,) Jurors; to serve during the *October Term* of said Court, in the year of our Lord, eighteen hundred and *fifty-nine*. And this, said Jurors, nor either of them, may omit, under the penalty of *forty dollars*, (if a *Grand Juror*, or *twenty dollars*, if a *Petit Juror*,) they having been drawn as Jurors, as aforesaid, according to law. And have you then and there this Precept.

*Witness, the Hon. Henry G. Lamar, Judge of said Court, this May 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

### *List of Jurors annexed to the above Precept.*

- |                        |                          |
|------------------------|--------------------------|
| 1. Samuel Felder,      | 4. Julius C. Gilbert,    |
| 2. William H. Talton,  | 5. John H. Powers,       |
| 3. John G. White, &c., | 6. Claiborn Bateman, &c. |

### *Affidavit of Defaulting Juror.*

STATE OF GEORGIA, }  
Houston County. } In person appeared before the undersigned, *Samuel Felder*, who being sworn, saith, that he was summoned to attend the *Superior Court* as a *Grand Juror*, at the last term of said Court; that he made default in not attending said Court, for which default he has been fined; that his reason for not attending said Court, was that he was *sick and entirely unable to attend*.

Sworn to and subscribed,  
before me, this *November 1, 1859.* }

SAMUEL FELDER.

*Simpson Moore, J. P.*



AN ACT for the better selection and drawing Grand Juries for the several Counties in this State.—*Approved Dec. 7, 1805.*

Grand Juries  
how to be se-  
lected.

218. SEC. I. It shall be the duty of the justices of the inferior courts of each county, together with the sheriff and clerk, or a majority of them, to convene at the court-house of their respective counties, on the first Monday in June next, and biennially, on the first Monday in June thereafter; whose duty it shall be to select from the books of the receiver of tax returns for their respective counties, fit and proper persons to serve as grand jurors. And shall make a list of persons so selected, and transmit it, under their hands, to the next superior court of their respective counties. And it shall be the duty of the judge then presiding, to cause the clerk of the said superior court to make out tickets, with the names of the persons so selected, which tickets shall be put in a box to be provided by the clerk, at the public expense; which said box shall have two apartments, marked numbers one and two. And the clerks of said courts shall, immediately after receiving such lists, fairly enter the same in a book for that purpose, to be provided at his own expense, distinguishing in separate columns, the persons liable to serve as grand jurors and those for the trial of civil and criminal causes, as pointed out by law. Which said box shall be locked and sealed up by the judge, and placed in the care of the clerk, and the key in the care of the sheriff. And no grand jury shall be drawn and impannelled but in the presence of the judge in open court; nor shall any clerk of the court, or other person having the custody of the jury-box, presume on any pretence whatever, to open the said jury-box, transpose or alter the names, except it be by the direction of the judge in open court, attending for the purpose of drawing jurors, under the penalty of being dealt with in the manner pointed out by law for mal-practice in office.—[See 236.]

The presiding  
Judge to draw  
the Juries.

219. SEC. II. The said judge in open court, shall unlock and break the seal, and cause to be drawn out of the apartment of the said box, marked number one, not less than twenty-three nor more than thirty-six names, to serve as grand jurors; which names so drawn out, shall after an account is taken of them, at each time of drawing, be carefully deposited in the other apartment of such box, marked number two. And when all the names shall be drawn out of the apartment number one, as aforesaid, they shall then commence drawing from the apartment number two and return them into number one, and so on alternately. But no name so deposited, shall on any pretence whatever, be destroyed, except it is within the knowledge of the judge that the said juror is either dead, removed out of the county, or otherwise disqualified by law, or the sheriff certify the same.

Jurors stand  
over when  
Court not  
held.  
Selection  
omitted, how  
to be made.

220. SEC. III. If it shall so happen that there should be a failure of the court in consequence of the non-attendance of the judge, then and in that case, the jurors being summoned, shall stand over to the next succeeding term, in the same manner as suitors and witnesses do in like cases: *Provided always*, that if the said justices, sheriff and clerk aforesaid, shall fail to make such selection on the day aforesaid, that then it shall be the duty of the said justices, sheriff and clerk aforesaid, or a majority of them, to make such selection, at or before the next superior court thereafter, which shall be held in their respective counties.—[See 228.]

Part of the  
Judiciary of  
1799 repealed.

221. SEC. IV. So much of an act, entitled “an act to amend an act, entitled an act to revise and amend the judiciary system of this State,” passed at Louisville, the 16th day of February, 1799, as militates against this act, be and the same is hereby repealed.—[See 236.]

AN ACT to give Relief to all ordained Ministers of the Gospel, so far as respects their serving as Jurors, or doing Militia duty.—*Approved Dec. 12, 1809.*



*Whereas*, the ordained Ministers of the Gospel are not by law exempted from serving as Jurors, or doing Militia duty ; for remedy whereof—

222. SEC. I. *Be it enacted*, That from and after the first day of January next, no ordained Minister of the Gospel shall be compelled to do militia duty within the limits of this State, in time of peace. M. of the G.  
excused from  
Militia duty.

223. SEC. II. That the judges of the superior courts, the justices of the inferior courts, and justices of the peace, are hereby authorized, on application, to excuse them from service on the juries of their different courts ; the application to be made in writing, or otherwise. And from Ju-  
ry duty.

AN ACT to amend the several Judiciary acts now in force in this State.—

*Approved Dec. 15, 1810.*

224. All special jurors shall be taken from the grand jury list of the county, and struck in the presence of the court, in the following manner— Special Jurors  
how selected. the clerk shall produce a list of the grand jurors present and there impannelled, from which the parties plaintiff and defendant, or their attorney, may strike out one alternately until there shall be but twelve jurors left, who shall forthwith be impannelled and sworn as special jurors, to try the appeal cause ; in all cases the appellants shall strike first. And in case of refusal in either to strike such special jurors after due notice given for the purpose and proof thereof, the judge before whom such notice is given for such special jury to be impannelled, shall on behalf of such absent party, or his attorney, proceed in the same way and manner, as if the party absent or refusing had been present, or consented to the same.

AN ACT to amend the LVith section of the Judiciary Law of this State.—

*Approved Dec. 4, 1811.*

225. SEC. I. The oath to be administered to special jurors, except in cases of divorce, shall be in the words following, to wit : “ You shall well and truly try each cause submitted to you during the present term, and a true verdict give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party : *Provided*, you are not discharged from the consideration of the case or cases submitted—so help you God.” Special Ju-  
ror's Oath.

AN ACT to admit Grand Jurors to give evidence.—*Approved Dec. 10, 1812.*

*Whereas*, doubts do exist as to the propriety of admitting grand jurors to give evidence against persons who may have been sworn before them when in session as a grand jury, on account of that part of the oath which requires them to keep secret the State's counsel, their own and their fellows' ; which secrecy ought not to exist longer than the term, or after the bill is publicly read in court ; for remedy whereof—

226. SEC. I. *Be it enacted*, That all grand jurors shall be competent witnesses in any court of record in this State, where it may be necessary, on account of anything that may be given in evidence before them as a body of grand jurors. Any law to the contrary notwithstanding. Grand Jurors  
may give evi-  
dence.

227. SEC. II. In future, the oath to be administered to the foreman of all grand juries, shall be as follows, viz. : “ You, as foreman of the grand jury of the county of —, shall diligently inquire, and true presentments make of all such matters and things as shall be given you in charge, or shall come to your knowledge touching the present service. The State's counsel, your fellows' and your own, you shall keep secret, unless called on to give evidence thereof in some court of law in this State. You shall present no one for envy, hatred or malice, nor shall you leave any one unpre- Oath of the  
Grand Juries.



sented from fear, favor, affection or reward, or the hope thereof; but you shall present all things truly and as they come to your knowledge—so help you God.” And the same oath which is taken by the foreman, shall be taken by each and every member of any and all grand juries in this State.

NOTE.—In addition to the above oath, the Solicitor-General at the same time, swears the Foreman as a Special Juror and as a Juror to try Claim-Appeal cases. The Clerk then calls up four at a time, the other members of the Grand Jury who heard the Oaths as they were taken by the Foreman, and the Solicitor-General administers to them the following oath: “The same Oaths that your Foreman has taken on his part, you and each of you do take, and shall well and truly observe and keep, on your part—so help you God.”

Should any of the members of the Grand Jury join the body *after* the Foreman has been sworn, the Oaths as administered to him must be administered to them in full.

AN ACT to authorize the Justices of the Inferior Courts in this State, to draw Grand and Petit Jurors, in certain cases.—*Approved Nov. 30, 1815.*

Judge failing to draw Juries, J. I. C. may do it.

228. The justices of the inferior courts for the several counties in this State, or a majority of them, together with the sheriff and clerk of the superior court, in any of their several counties, be and they are hereby authorized and required, in all cases where there shall or may have been a failure of the judges of the superior courts, in drawing grand and petit jurors agreeably to law, to assemble at the court-house in their several counties, at any time which shall be to them convenient, and proceed to open their jury-boxes, and draw from said boxes a sufficient number of names to serve as grand and petit jurors, for their or either of their said counties, at their next then depending superior courts. And the jury being so drawn, the said box or boxes again to seal and deliver, together with the keys, to the proper officer: *Provided*, that said assemblage and drawing shall be at least sixty days previous to the commencement of the superior court at which said jurors shall be liable to serve.—[*And see next Act.*]

AN ACT to authorize the Justices of the Inferior Courts in this State to draw Juries out of Term-time.—*Approved Dec. 13, 1820.*

J. I. C. may draw Jury for their Courts under certain circumstances.

229. SEC. I. From and after the passing of this act, that it shall be lawful in all cases where it happens that the justices of any inferior court, at the regular term of said court, shall omit drawing a jury to serve at the succeeding court, that the justices of said court, or any three of them, with the sheriff and clerk, meet at the place of holding such court, at least forty days previous to the sitting of said court, and draw a jury, under the same regulations that they ought to have done in term time.

May draw a Jury at any time.

Clerk must furnish Sheriff with list, who must summon Jury.

230. SEC. II. When any inferior court in this State, at the regular term of said court, have omitted drawing a jury to serve at the next court, that they shall after the passing of this act, be authorized to draw a jury at any time, under the same regulation as in the preceding section. And that the said clerk of the inferior court shall immediately after the drawing of said jury as herein provided, make out a list of the jury so drawn, and place the same in the hands of the sheriff or deputy, who shall proceed immediately after receiving the same, to summon the jury so drawn, in the same manner as if they had been drawn at the regular term of said court. And the said jurors so drawn and summoned, shall be bound and liable to serve in the same manner, and under the same penalties, as if drawn at the regular term of said court. Any law to the contrary notwithstanding.

Jurors must attend.

AN ACT to define the duties of Grand Jurors in this State, so far as respects the time they are to be considered bound to notice Offences committed in their respective counties.—*Approved Dec. 22, 1829.*

231. Grand jurors shall be bound only to notice or make presentment of such offences as may or shall come to their knowledge or observation, after they shall have been sworn. But nothing in this act shall be considered as impairing their right as jurors, to make presentments of any violations of the laws which they may know to have been committed at any previous time.

When Grand Jurors bound to notice of-fences.

SEC. II. All laws and parts of laws militating against the intent and meaning of this act, are hereby repealed.

AN ACT to amend and alter the Oath of Bailiffs who take charge of Special and Petit Juries, and for other purposes.—*Approved Dec. 26, 1831.*

Whereas, the oath now administered to Bailiffs, requires them to keep the Juries without meat, drink, or fire, candle-light and water only excepted. And whereas, it often happens, that in cases of much litigation, Juries are unable, for a great length of time, to agree upon a verdict, and are thereby exposed to cold and hunger; for remedy whereof—

232. SEC. I. *Be it enacted*, That the following shall be the oath to be administered to all bailiffs sworn to take charge of special and petit juries, in the superior and inferior courts of this State, to wit: “You shall take this jury, and all others committed to your charge during the present term, to the jury-room, or some other private and convenient place, where you shall keep them without meat, drink or fire, candle-light and water only excepted, unless otherwise directed by the court. You shall not speak to them yourself, nor suffer others to speak to them, unless it be by leave of the court; to ask them if they have agreed upon a verdict, or are likely to agree; all this you shall do, to the best of your skill and power—so help you God.”

Bailiff's oath when charged with Juries.

233. SEC. II. Whenever it shall so happen that the jury is confined in the investigation of any case, for a length of time, which exposes them to hunger or cold, or both, the court may on application from said jury, direct them to be furnished, at their own expense, with such nourishments, as in his own judgment, may seem just and proper. And permit them to have provisions and fire, or either, if circumstances should, in the judgment of the court, require it.

Judge may allow Jury to have refreshments.

234. SEC. III. The said bailiffs shall receive from the county-treasurer, (or clerk of the court, where there is no treasurer,) of each county, \$1 per day, in addition to their present fees, for each day the said bailiffs shall serve, in attendance on the juries.—[*See Fee-Bill, for additional Fees.*]

Bailiff's pay.

AN ACT to relieve the Justices of the Inferior Court from Jury-duty.—*Approved Feb. 21, 1850.*

235. SEC. I. *Be it enacted*, That from and after the passage of this act, all justices of the inferior courts of this State, be and the same are hereby, at their own option, exempt from jury duty.

J. I. C. exempt from Jury-duty.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to provide for the selection of Grand and Petit Jurors, in certain cases.—*Approved March 3, 1856.*

236. SEC. I. *Be it enacted*, That whenever the jury-boxes or lists of names of grand and petit jurors of any county shall be destroyed, it shall and may be lawful for the justices of the inferior court, clerk and sheriff thereof, or a majority of them, so soon thereafter as may be practicable, to meet at the court-house in such county, and select lists of names of grand and petit jurors, and arrange them in boxes, as provided for by act of December 7th, 1805.

When Jury Boxes destroyed how lists of Jurors made out.



AN ACT declaring who are qualified and liable to serve as Jurors in criminal cases; regulating the manner of impannelling a Jury in such cases; declaring who are competent Jurors, and the mode and manner of ascertaining such competency, and for other purposes therein mentioned.  
—*Approved Feb. 28, 1856.*

- Who qualified to serve as Jurors. 237. SEC. I. All free white male citizens who have arrived to the age of twenty-one years, and not over sixty years, and residents in the county where the trial is to be had, and not being idiots or lunatics, shall be qualified and liable to serve as jurors upon the trial of all criminal cases.
- Number of Jurors impannelled. 238. SEC. II. When any person stands indicted for an offence which upon conviction, will subject him to the punishment of death, or confinement in the penitentiary, it shall be the duty of the court, upon the request either of the State or the accused, to have empannelled forty-eight men, from whom to select a jury for the trial of such offender.
- Grand Pannel how composed. 239. SEC. III. Said pannel of forty-eight men shall be composed of the twenty-four men who are serving as petit jurors at the court when the trial is had, and twenty-four men summoned by order of the court, indiscriminately and impartially from the citizens of the county, qualified as aforesaid. And if twenty-four jurors are not in attendance, the panel of forty-eight shall be made up by persons served [*liable to serve*] as aforesaid.
- List to be furnished the Parties. 240. SEC. IV. It shall be the duty of the clerk to make out three lists of said pannel, one of which shall be furnished to the counsel for the State, one for the counsel of the accused, and one the clerk shall keep himself. After such lists are thus furnished, the clerk shall call over the names of the persons composing the pannel, and so soon as this is done, the pannel shall be immediately put on the accused.
- Challenge to the array. 241. SEC. V. If the accused thinks proper, he may then challenge the array, which challenge shall be made in writing, particularly specifying the causes of such challenge; and it shall be the duty of the court immediately to determine the sufficiency of the same.
- How to proceed when Challenge to the array sustained. 242. SEC. VI. If the court determines the causes of such challenge sufficient, the pannel shall be discharged, and the court shall immediately cause a new pannel of forty-eight men to be summoned indiscriminately and impartially, from the citizens of the county, qualified as aforesaid; and shall proceed with this pannel, in the same manner as is prescribed by this act in relation to the first pannel; and if the accused shall challenge this pannel and the causes of challenge shall be adjudged sufficient by the court, such pannel shall be discharged, and the court shall immediately cause another pannel to be summoned, in manner aforesaid; and shall so proceed until a pannel is obtained to which there is no legal objection.
- Jurors how called up and objected to. 243. SEC. VII. If the first pannel shall be challenged and the causes of the challenge shall be adjudicated insufficient by the court, the clerk shall call the first name on the list, and the person so called shall be presented to the accused in such manner that he can distinctly see him, and then it shall be lawful for the State, or the accused, to make the following objections, to the person so presented:—  
*First*, that he is not a free white citizen, resident in the county.  
*Second*, that he is not twenty-one years of age, or that he is over sixty years of age.  
*Third*, that he is an idiot, or lunatic, or intoxicated.  
*Fourth*, that he is so near of kindred to the prosecutor, or the deceased, as to disqualify [*him*] by law, from serving on the jury.
- Objections how inquired into and determined. 244. SEC. VIII. It shall be the duty of the court immediately to hear such evidence, in relation to the truth of said objections, as he shall see proper; and if he shall be satisfied that either of said objections



are true, the person so presented shall be set aside for cause ; and the clerk shall call the next person on the list, and the court shall proceed with him in the same manner as with the person first presented, and so on with every person presented, and the State or the accused may make the same objection to any person presented, which shall be disposed of in the same manner.

245. SEC. IX. If no objection is made as aforesaid, or being made, is overruled by the court, the attorney prosecuting for the State, shall put to the person presented as aforesaid, the following questions : Questions to determine competency.

Have you, from having seen the crime committed, or having heard any part of the evidence delivered on oath, formed or expressed any opinion, as to the guilt or innocence of the accused ?

If he shall answer this question in the negative, the following questions shall then be put to him :—

Have you any prejudice or bias resting on your mind, for or against the accused ?

If he shall answer this question in the negative, the following question shall be put to him :—

Is your mind perfectly impartial, between the State and the accused ? And if he shall answer this question in the affirmative, he shall be adjudged and held a competent juror, in all cases where the offence does not involve the life of the accused ; but when it does involve his life, the following additional question shall be put to him :—

Are you conscientiously opposed to capital punishment ?

If he shall answer this question in the negative, the person so presented shall be held and adjudged a competent juror in capital cases also : *Provided nevertheless*, that either the State or the defendant, shall have the right to introduce evidence before the judge, to show that the answer, or any of them, of the jurors, are untrue ; and it shall be the duty of the judge to determine upon the truth of such answer, as may be thus questioned before the court. Competency in capital cases.

246. SEC. X. If the person so presented shall answer any of the said questions in the affirmative, except the one as to his mind being impartial between the State and the accused, and shall answer that question in the negative, he shall be set aside for cause, and the clerk shall call the next person on the list, and the court shall proceed to ascertain his competency in the manner aforesaid, and shall so proceed with each person presented as aforesaid, until a jury is impannelled to try the accused. Challenge for Cause.

247. SEC. XI. If the person presented to the accused shall answer all the aforesaid questions in such manner as to render him a competent juror, or the judge upon an objection made, shall decide him to be competent, he shall then be immediately put upon the accused unless peremptorily challenged by the State, and when so put upon the accused, unless peremptorily challenged by him, shall be sworn as a juror to try said case ; and the court shall proceed with every person presented to the accused in a like manner, as aforesaid, until a jury is impannelled to try said case. When Juror put upon the accused.

248. SEC. XII. When the competency of a juror has been ascertained, in the manner herein-before prescribed, and said juror has been adjudged competent, as aforesaid, no other or further investigation shall be had in relation to his competency, either by triors or otherwise, but such jurors shall be considered and held free of all exception. Competency how ascertained.

249. SEC. XIII. Nothing in this act contained shall be so construed as to give the State, or the accused in any case, more peremptory challenges than are now allowed by law. No more peremptory challenges allowed.

SEC. XIV. [Repeals conflicting laws.]



*Challenge to the Array.*

STATE OF GEORGIA

vs.

JOHN DOE.

Indictment for *Murder*.Superior Court, *April* Term, 1859.

The accused in the above indictment, having had the Array of Jurors, summoned in the above case, put upon him, hereby excepts to said Array, and for cause of exception says:

*First*, [Set out fully and at large, the cause of exception.]

*Secondly*, &c., &c.,

All which is respectfully submitted to the consideration of the Court here presiding.

JOHN DOE, *the accused*.

AN ACT to authorize the Foreman of Grand-Juries to swear Witnesses.—

*Approved Dec. 21, 1857.*

Foreman of  
Grand-Juries  
to administer  
Oath.

250. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for the foreman of each grand-jury, in this State, to administer the oath now prescribed by law, to any and all witnesses who may be required to testify before grand-juries in this State.

SEC. II. [Repeals conflicting laws.]

*The Oath.*

“The evidence you shall give the Grand-Jury, on this Bill of Indictment, (or Presentment, as the case may be,) [*here state the case*;] shall be the truth, the whole truth, and nothing but the truth—so help you God.”—*Cobb's Penal Code*, 195.

## ATTORNEY AT LAW.

Attorney lia-  
ble for costs.

251. SEC. XXVI. And if any party, plaintiff or defendant, be hereafter non-suited or cast, by reason of the neglect or misconduct of the attorney who shall hereafter bring or be employed in such suit, in all cases the said attorney shall pay all costs that may accrue thereby, and the court shall immediately enter up judgment accordingly, for the same.—[*See next Act*.]

AN ACT to amend and explain the XXIXth section of the Judiciary law of this State.—*Approved, Dec. 7, 1812.*

*Whereas*, the above-recited section of the judiciary law of this State, is not sufficiently explicit to effect the object for which it was intended—

Liability of  
Attorney for  
Costs in cer-  
tain cases.

252. SEC. I. *Be it therefore enacted*, That where any attorney shall institute a suit in any of the courts of this State, for and in behalf of any person or persons who resides or reside out of this State, or out of the county in which the defendant or defendants may reside, and in which such suit may be tried, such attorney shall be liable to pay all costs, in case such suit shall be dismissed, or the plaintiff or plaintiffs be cast in his, her or their suit. And it shall be lawful for the clerk of said court to issue execution against said attorney or attorneys for the amount of the cost of said suit.

Attorney lia-  
ble for Costs

253. SEC. II. Where any attorney shall institute a suit in any of the counties of this State, for any person who resides out of the county in

which such suit is brought, and judgment shall be obtained thereon, and the sheriff shall return the execution, "no property to be found;" that then the plaintiff's attorney shall be bound for the costs of said suit. And the clerk may issue his execution against the plaintiff and the attorney who brought said suit, jointly; for the amount of the cost of such suit. And if any attorney shall retain in his hands any money received by him for any client, after being by the court ordered to pay over the same to the principal, he shall be struck from the list of attorneys, and never more suffered to plead in any of the courts in this State.—[*See County Officers and see next Act.*]

where the Plaintiff is non-resident and Defendant insolvent.

Defaulting Attorney to be stricken from roll.

AN ACT to continue in force the act passed on the seventh of December, 1812, entitled "an act to amend and explain the twenty-ninth section of the Judiciary law of this State," and to require non-resident Attorneys to pay Costs in certain cases commenced by them.—*Approved Dec. 23, 1839.*

*Whereas*, it is held in some of the Judicial Circuits of this State, that the said act, so far as the same relates to the liability of Attorneys for Costs, has been repealed by the act passed on the twentieth of December, 1834, entitled "an act to define the mode in which cost under the act, entitled an act to revise and amend an act for ascertaining the Fees of Public Officers of this State, passed the 18th December, 1792, shall be taxed and collected in future;" which repeal was not contemplated by the legislature; therefore—

254. SEC. I. *Be it enacted*, That the said first-recited act, be and the same is hereby fully re-enacted and continued in full force.

Act of 1812 re-enacted.

255. SEC. II. It shall and may be lawful for the proper officers to demand and receive their full costs from any attorney who resides out of this State, before they shall be bound to perform any service in any cause commenced by said attorney, where the plaintiff shall reside out of this State, or any county thereof.

Non-resident Attorney to pay Costs in advance.

AN ACT for the better regulating the admission of Attorneys to Plead and Practise in the several Courts of Law and Equity, within this State.—*Approved Dec. 8, 1806.*

256. SEC. I. From and after the passing of this act, all and every person or persons whatsoever, who are citizens of this State, may on application to the judge of the superior court, be admitted to practice as an attorney: *Provided*, such person shall produce satisfactory evidence of his moral rectitude, and shall undergo an examination in open court, upon a day assigned for that purpose, by the judge. Any law, usage or custom, to the contrary notwithstanding.—[*See the Forms.*]

Attorney how admitted.

257. SEC. II. The rule of court relative to the admission of attorneys, which requires the applicant to study any particular length of time in the office of any judge or practitioner of law, be and the same is hereby declared to be abrogated and void.

No particular time of study required.

AN ACT to authorize certain persons therein described to Plead and Practise in the Courts of Law and Equity in this State, on the terms therein mentioned.—*Approved Dec. 20, 1823.*

258. SEC. III. When any application for admission to plead and practice in the courts of law and equity in this State, shall be made by any person who shall produce to the court in which such application shall be made, the certificate of a judge of the court of common pleas, or judge of the court of equity of the State of South Carolina, duly attested under the seal of either of the said courts, stating in substance that such person has practised for three years immediately preceding, in the county courts of the said State, as an attorney and solicitor, and has maintained a good moral and professional rep-

Applicants from South Carolina, how admitted to practice in this state.



utation, he shall be forthwith admitted to plead and practise as an attorney and solicitor in the courts of law and equity in the State of Georgia, without a compliance of any form or requisite, except only the payment of the usual fees and taking the usual oath: *Provided always*, that this act shall not go into operation until an act similar in its provisions, shall have been passed by the legislature of the State of South Carolina.—[See 260.]

AN ACT to prohibit the Judges of the Superior Courts of this State, from practising as Attorneys, Proctors, or Solicitors, in the District or Circuit Courts of the United States for the District of Georgia.—*Approved Dec. 20, 1824.*

Judges S. C.  
prohibited  
from practis-  
ing.

259. SEC. I. From and after the 25th of November next, the judges of the superior courts of this State, be and they are hereby prohibited from practicing as attorneys, proctors, or solicitors, in the district or circuit courts of the United States for the district of Georgia.—[See 265.]

AN ACT to provide for the admission of Attorneys and Solicitors from adjoining States and Territories, to Plead and Practise Law in this State.—*Approved Dec. 19, 1829.*

Attorneys  
from other  
States and  
Territories,  
how qualified  
to practise in  
this State.

260. SEC. I. From and after the passage of this act, it shall and may be lawful for any judge of the superior courts in this State, in term-time of any of said superior courts, upon application being made and filed, in writing, to cause a license to be issued by the clerk of said court, to any attorney or solicitor from any of the adjoining States or Territories, to plead and practise in any of the courts of law and equity in this State, as fully as if such applicant were a citizen of Georgia: *Provided*, said applicant shall, before the granting of such license, produce to the judge aforesaid, a certificate from some one of the judges of the superior, circuit, or district courts of the State or Territory of which he is a citizen, under the seal of said court, stating that he is of good moral character, and that he has been regularly admitted to plead and practise law in such State or Territory, and is, at the date of such certificate, a practising attorney of such State or Territory.

Clerk's fee for  
License.

261. SEC. II. The clerk of the superior court who issues such license, shall be entitled to and receive the same fee therefor, to be paid by said applicant, as is usually paid by persons admitted, who are citizens of this State.

SEC. III. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to make null and void all Contracts made and entered into, in writing or otherwise, between party or parties, Plaintiff or Defendant, and Attorney or Attorneys at Law, where the Attorneys shall fail or neglect to attend to the suit or suits, which he or they contracted to do; (in person, or by some competent Attorney;) until the rendition of a Judgment.—*Approved Dec. 26, 1831.*

Professional  
Contracts  
void, if the  
service be not  
performed.

262. SEC. I. From and after the passage of this act, all contracts made and entered into between party or parties, plaintiff or defendant, and attorney or attorneys-at-law, in writing or otherwise, shall be held and deemed null and void, whenever the said attorney or attorneys, shall fail to attend in person, or by some competent attorney, to the suit or suits which he or they contracted to do, until the rendition of a judgment.

Forfeiture for  
transferring  
Note, etc.

263. SEC. II. If any attorney or attorneys-at-law, as aforesaid, shall transfer any note or notes, obligation or obligations in writing, taken or received for his or their services as attorney or attorneys, as aforesaid, and shall fail to attend to the suit or suits, in person or by some other competent attorney, until the rendition of a judgment, he or they shall forfeit

and pay to the person or persons, whom the same was taken from, double the amount so transferred, recoverable in any court having jurisdiction of the same.

AN ACT to permit Attorneys of the State of Alabama to Plead and Practise in the several Courts of Law and Equity in this State.—*Approved Dec. 23, 1835.*

264. SEC. I. From and after the passage of this act, it shall and may be lawful for any judge of the superior courts of this State, upon application made by any licensed attorney of the State of Alabama, either in term-time or in vacation, to cause a license to be issued by any of the clerks of the superior courts, authorizing said attorney to plead and practise in the several courts of law and equity in this State: *Provided*, the attorney making such application shall produce before said judge of the superior court, to whom he applies for admission, as aforesaid, his license to plead and practise in the courts of Alabama, and a certificate of his good moral character, signed by some judge of the courts of said State, and pays to the clerk issuing the license, the sum of five dollars for the same.

Attorney of Alabama allowed to Practise in the Courts of Georgia.

SEC. II. [Repeals all conflicting laws.]

AN ACT to prohibit certain persons from Pleading and Practising Law, in certain cases.—*Approved Dec. 22, 1843.*

265. SEC. I. *Be it enacted*, That no person who has been, or may hereafter be, elected to the office of the judge of the superior court of this State, shall plead or practice in any of the courts of law or equity of this State, within the judicial district for which he may be, or may have been elected; between the time of his election and qualification as judge of the superior court. And any person violating the provisions of this act, shall be guilty of a misdemeanor, and punished accordingly, at the discretion of the court: *Provided always*, that this act shall not prevent any such person from appearing [*and*] prosecuting or defending any cause in which he may have been actually employed at the time of his election.

Judges S. C. may not Practise, etc.

Except in certain cases.

AN ACT to regulate the admission of Attorneys to Plead and Practise Law in the several Courts of Law and Equity, within this State.—*Approved Dec. 22, 1847.*

266. SEC. I. *Be it enacted*, That from and after the passage of this act, any person or persons, who are citizens of this State, may on application to a judge of the superior court, be admitted to practise as an attorney in the courts of law and equity of this State, without any qualification as to age: *Provided*, such person or persons shall produce satisfactory evidence of moral rectitude, and shall undergo an approved examination in open court.

Qualification as to age, not required.

267. SEC. II. Any person or persons, under the age of twenty-one years, who may be admitted by virtue of this act, shall be liable, in all cases, as if he or they were of full age.

Liability for Contracts.

AN ACT to regulate the Testimony of Attorneys at Law.—*Approved Feb. 21, 1850.*

268. *Be it enacted*, That from and after the passage of this act, it shall not be lawful for any attorney-at-law or in equity, in any case hereafter commenced, to give testimony in any court of law or equity in this State, of any matter or thing, either for or against his client, the knowledge of which he may have acquired from his client, or during the existence and by

Attorney may not testify against or in favor of his Client.



But must Answer in Equity. reason of the relationship of client and attorney: *Provided nevertheless,* that no attorney shall be exempted from making answer as defendant, when a proper case shall be made in equity, and his answer required, as by the laws now in existence.

All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Form of Application and Admission.*

#### PETITION.

STATE OF GEORGIA, } *To the honorable Henry G. Lamar, Judge of*  
*Houston County. { the Superior Courts of the Macon Circuit.*

The undersigned Petitioner respectfully sheweth, that with a view to the Practise of the Law, as a profession, he has applied himself to its study. That supposing he may safely go into the Practice, he prays such proceedings as are usual and lawful, for the examination and admission of applicants; at such time as may suit the Court, during the present Term. Respectfully submitted, *October Term, 1859.*

CLINTON L. DUNCAN.

### *Certificate of Character.*

STATE OF GEORGIA, } *To the honorable Henry G. Lamar, Judge of*  
*Houston County. { the Superior Courts of the Macon Circuit.*

The undersigned certifies, that he has, *for a number of years,* been acquainted with the Petitioner, *Clinton L. Duncan*; that he is of good moral character, and has studied Law with a view to its Practice. *October 25, 1859.*

JOHN M. GILES.

### *Oath of the Applicant.*

"I, *Clinton L. Duncan*, do solemnly swear, (or affirm, as the case may be,) that I will justly and uprightly, demean myself, according to the Laws, as an Attorney, Counsellor and Solicitor. And that I will support and defend the Constitution of the United States, and the Constitution of the State of Georgia—so help me God."

### *Commission.*

STATE OF GEORGIA.—At a Superior Court, holden in and for the County of *Houston*, at *October Term, 1859.*

Know all men by these presents, that at the present sitting of this Court, *Clinton L. Duncan*, made his application for leave to Plead and Practise in the several Courts of Law and Equity in this State; whereupon the said *Clinton L. Duncan* having produced satisfactory evidence of his good moral character, and having been examined in open Court, and being found well acquainted with and skilled in the Laws, he was admitted by the Court, to all the privileges of an Attorney, Solicitor and Counsellor, in the several Courts of Law and Equity in this State.

In testimony whereof the presiding Judge has hereunto set his hand, with the seal of the Court annexed, this *October 25, 1859.*

[L. S.] HENRY G. LAMAR, J. M. C.  
*William H. Miller, Clerk.*

*Eighth Common Law Rule.*—"Every person making application for admission to the Bar, must apply to some Superior Court in this State, and produce satisfactory evidence to the Court, [*of his being twenty-one years of age, this is unnecessary—see act of 1847;*] of good moral character, [*and of having read Law; unnecessary, see act of 1806.*] A certificate of good moral character, [*and of the applicant's being of full age,*] signed by any Judge of the Superior Courts in this State, or any reputable practising Attorney thereof, will be deemed sufficient; but from other persons, a written affidavit will be required; and shall undergo the whole examination, touching his qualifications, in open Court. All applicants for admission shall be examined on the principles of the Common and Statute Law of England, in force in this State; the principles of Equity; the Constitution of the United States, and of the State of Georgia; the Statute Laws of this State, and the Rules of Court. And in no case, shall any person be admitted who shall not be considered by the Court, to be qualified for the Practise of the Law."

*License of an Attorney from another State or Territory.*

STATE OF GEORGIA.

At a Superior Court, holden in and for the County of *Houston*, at *October* Term, 1859, *James Jones*, of the State of *Tennessee*, a Practising Attorney of said State of *Tennessee*, made application, in writing, for permission to Plead and Practise in the Courts of Law and Equity, in this State. And said *James Jones*, having given satisfactory evidence of his being an Attorney in said State of *Tennessee*, and of his good moral character; it is ordered, that the said *James Jones*, be and he is hereby admitted to all the privileges and immunities of an Attorney at Law of this State, as fully as if said *James Jones* were a citizen of this State.

Witness the honorable *Henry G. Lamar*, Judge of said Court.

[L. S.]

WILLIAM H. MILLER, Clerk.

AN ACT to permit Practising Attorneys, to hold the Office and discharge the duties of Justice of the Peace, in this State.—*Approved March 5, 1856.*

269. SEC. I. *Be it enacted*, That from and after the passage of this act, it may and shall be lawful for any practising attorney to hold and discharge the duties of justice of the peace, in the State of Georgia. All laws and parts of laws, heretofore passed, to the contrary notwithstanding.

Practising At  
torney may  
be Justice.

SPECIALTIES, ETC.

270. SEC. XXV. All bonds and other specialties, and promissory notes, and other liquidated demands, bearing date since the 9th day of June, 1791, whether for money or other thing, shall be of equal dignity and be negotiable by endorsement, in such manner and under such restrictions as are prescribed in the case of promissory notes: *Provided*,

Bonds, Notes,  
etc., negotia-  
ble.



1] **Negotiability** that nothing herein contained shall prevent the party giving any bond, note or other writing, from restraining the negotiability thereof, by expressing in the body thereof, such intention.  
 may be re-  
 strained.

AN ACT to ascertain and establish a certain and uniform mode of calculating the prices of Specific Articles, in contracts between individual and individual in this State.—*Approved Dec. 1, 1800.*

*Whereas*, it doth frequently happen that in the ordinary transactions between individuals of this State, Contracts are entered into for the payment of Specific Articles, which Contracts may have been either verbal or written. *And whereas*, great difficulty and uncertainty has occurred in the trial of such cases in Courts of Justice, in ascertaining the time from which the prices of such Specific Article should be calculated; for remedy whereof, and for the establishment of some precise mode of estimation in future—

**Contract for Specific Article how settled.**

271. *Be it enacted*, That on every bond, note or other instrument in writing, or verbal contract, for the payment of negroes, produce, stock, goods, or other specific articles of any nature or kind whatsoever, the price of such specific article at the time it became due, upon such bond, note, or other instrument in writing, or verbal contract, as aforesaid, (and having respect to the place [*where*] made payable, according to contract, if any,) shall be the sole and established rule of valuation. And all and every such bond, note, or other instrument in writing, or verbal contract, for specific articles, as aforesaid, shall bear interest at eight [*seven*] per cent. from the time they become due; in like manner as if given for the payment of money simply. Any law to the contrary notwithstanding.

### *Note for Specific Article.*

Twelve months after date, I promise to pay *John Doe* or bearer, *ten Cows and Calves*; for value received, this *May 1, 1859.*

RICHARD ROE.

AN ACT to designate the Holidays to be observed in the acceptance and payment of Bills-of-Exchange and Promissory Notes; and to disallow the three days commonly called the three days of grace, on all Sight-Drafts, or Bills-of-Exchange drawn payable at sight.—*Approved Feb. 8, 1850.*

**Holidays not to be counted.**

272. SEC. I. *Be it enacted*, That the following days, namely—the first day of January, commonly called New Year's Day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas-day, and any day appointed or recommended by the Governor of the State of Georgia, Mayor of any City, or other municipal authority in said State, or the President of the United States, as a day of Fast or Thanksgiving, shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of protesting, and giving notice of the dishonor of any bill or bills-of-exchange, bank check or checks, and promissory note or notes, made after the passing of this act, be treated and considered, as is the first day of the week, commonly called Sunday.

**Days of Grace when not allowed.**

273. SEC. II. Three days, commonly called the three days of grace, shall not be allowed upon any sight-drafts or bills-of-exchange, drawn payable at sight, after the passage of this act; but the same shall be payable on presentation thereof, subject to the provisions of the first section of this act.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

## BILLS-OF-EXCHANGE.

AN ACT concerning Bills-of-Exchange.—*Approved Dec. 19, 1823.*

274. Whenever any bill-of-exchange, hereafter to be drawn or negotiated within this State, upon any person or persons of or in any State, territory, or district, of the United States, shall be returned unpaid, and shall have been duly protested for non-payment, in the manner usual in cases of foreign bills-of-exchange, the person or persons to whom the same shall or may be payable, shall be entitled to recover and receive of and from the drawer or drawers; or the endorser or endorsers of such bill-of-exchange, five per cent. damages, over and above the principal sum for [which] said bill-of-exchange shall have been drawn, together with lawful interest on the aggregate amount of such principal sum, from the time at which notice of such protest shall have been given, and the payment of the said principal sum and damages, shall have been demanded.—[*See next Act.—And 278.*]

Five per cent. damages on dishonored bills, in certain cases.

AN ACT to reduce the damages upon bills-of-exchange drawn on any place beyond the limits of the United States, returned protested for non-payment.

And to define more precisely the mode of settling the same on the principles of exchange.—*Approved Dec. 24, 1827.*

*Whereas*, the damages at present established by commercial custom and judicial decision in this State, upon foreign bills-of-exchange returned and protested, are much too high. *And whereas*, a doubt exists what is the legal mode of settlement; for remedy whereof—

275. *Be it enacted*, That on the bills-of-exchange drawn in this State after the thirty-first day of January next, upon any place beyond the limits of the United States, which shall be returned protested for non-payment, it shall be lawful for the holder or holders thereof, to recover from those liable for the payment thereof, the amount of the said bill-of-exchange, with postages, protests, other necessary expenses and interest upon the amount of these sums, from the date of the protest until the time of presenting the same for payment in this State; at the rate established at the place at which the bill was payable. And also, such premium upon the face of the bill and the foreign postages, protest and necessary expenses, as good bills-of-exchange upon the same place which [where] such bill was made payable, or [are] worth, at the time and place of its demand, in this State. But if such bills are, then and there, at a discount, the holder shall deduct such discount upon and from the items of principal, foreign postage, protest and necessary expenses.

Foreign bills being returned protested, holder may recover necessary expenses.

And prem'm.

276. SEC. II. It shall be lawful for the holder of such bill-of-exchange, so returned protested, as aforesaid, also to claim and receive from the person or persons liable therefor, damages at the rate of ten per cent. upon the amount for which the said bill was drawn.

Damages may be recovered.

277. SEC. III. It shall be lawful for the holder or holders of such bill or bills, returned protested, as aforesaid, to recover the legal interest established in this State, from the time of presentment for settlement until paid, upon the sum or sums to which he would be entitled by the before-mentioned mode of settlement.

And interest.

AN ACT to alter and amend an act concerning Bills-of-Exchange, passed on the nineteenth December, 1823. *Approved Dec. 21, 1839.*

278. SEC. I. *Be it enacted*, That all the provisions of said act, be and they are hereby extended to all bills-of-exchange hereafter drawn, in this State, upon or made payable [at] any place within the United States, out of this State; without reference to the residence of the drawer or acceptor.

Act of 1823, extended to all bills payable out of this State.



*Foreign Bill-of-Exchange.*PERRY, *May 1, 1859.*

Exchange for \$1,000.

At two usances, (or at sight, or after date,) pay this my first Bill-of-Exchange, (second and third, of the same tenor and date, not paid,) to Messrs. *Small & Wood*, or order, (or bearer,) *one thousand* dollars; value received of *them*; and place the same to account, as per advice from yours, &c.,

RICHARD ROE.

To Mr. *John Doe in Liverpool.*Payable at *Liverpool.**Inland Bill of-Exchange.*

\$1,000

PERRY, *May 1, 1859.*

At sight, (or, on demand; or at *ten days* after sight; or, at *ten days* after date,) pay to Mr. *John Doe* or order, (or, bearer,) *one thousand* dollars, for value received.

RICHARD ROE.

To Mr. *James Short*, Merchant  
in *Savannah.* Payable at *Savannah.*

*Check.*

\$1,000

BANK OF STATE OF GEORGIA,  
*Savannah, May 1, 1859.*Pay to the order of *John Doe*, *one thousand* dollars.RICHARD ROE, *Cashier.*To the Cashier *Planters' Bank, Savannah.*

## PROMISSORY NOTES.

*Joint Note.*

\$1,000. *Six months* after date, we promise to pay *John Doe*, or bearer, *one thousand* dollars; for value received, this *May 1, 1859.*

RICHARD ROE.

JOHN STONE.

\$1,000. *Eight months* after date, I promise to pay *John Doe*, or bearer, *one thousand* dollars; for value received, this *May 1, 1859.*

RICHARD ROE.

JOHN STONE.

*Joint and several Promissory Note.*

\$1,000. *Seven months* after date, we or either of us, promise to pay *John Doe*, or bearer, *one thousand* dollars; for value received this *May 1, 1859.*

RICHARD ROE.

JOHN STONE.

*Promissory Note payable to order.*

\$1,000. *Two months* after date, I promise to pay *John Doe*, or order, *one thousand* dollars; for value received, this *May 1*, 1859.

RICHARD ROE.

\$1,000. *Two months* after date, I promise to pay to the order of *John Doe*, *one thousand* dollars; for value received, this *May 1*, 1859.

RICHARD ROE.

NOTE—"Where the Note is payable to order, there must be a written endorsement by the Payee to vest the property in the Endorsee, and enable him to sue in his own name."

## SETS-OFF.

279. SEC. XXIV. In all cases of mutual debts and sets-off, where the jury shall find a balance for the defendant, such defendant may and shall enter up judgment for the amount, and take out execution in such manner as plaintiffs may do by this act: *Provided*, such defendant shall at the time of filing his answer, also file therewith a true copy or copies of the subject-matter of such sets-off. And where the plaintiff shall be indebted to the defendant on open account for dealings between themselves, and where the defendant shall hold and possess in his own right, by assignment, endorsement or otherwise, according to law, any bond, note, bill or other writing, for money or other thing, of the said plaintiffs, such defendant shall and may offer the same as sets-off, and on due proof, shall be allowed the same.

Sets-off may be plead and allowed.

## TESTIMONY.

280. SEC. XIX. Where the attendance of any person shall be required as a witness in any of the courts aforesaid, in any cause depending therein, it shall be the duty of the clerks of the said courts respectively, on application, to issue writs of subpœna, directed to the persons whose attendance shall be required, where such persons reside within the county, in which such cause may be depending. Which writ of subpœna shall express the cause, and the party at whose suit it shall be issued. And shall be served on such witnesses at least five days before the court to which it shall be returnable. And which writ shall be served by a sheriff, constable or some private person. And the return of a sheriff or constable of such service, or the affidavit of any private person, shall be sufficient evidence that such subpœna was duly executed.

Clerk must issue Subpœna.

What the Writ must express.  
How it must be served.  
Proof of service.

281. SEC. XX. Where it shall appear in manner aforesaid, that a witness in any cause shall have been duly summoned, and such witness shall fail to appear, it shall be the duty of the court, on motion, to issue an attachment against such defaulting witness, returnable to the next court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such non-attendance, which shall be judged of by the court; but shall nevertheless, be subject to the action of the person at whose suit such witness shall have been summoned,

Proceedings against defaulting Witness.

Defaulting Witness liable for damages.



for any damage which he, she or they, may have sustained by reason of such non-attendance.

Must attend  
'till dis-  
charged.

282. SEC. XXI. When a subpœna shall be served on any witness, in conformity to this act, it shall be the duty of such person so summoned, to attend from time to time, until the cause in which such witness shall have been summoned, is tried, or be otherwise discharged by the court.

Witnesses  
Fees and the  
mode of en-  
forcing pay-  
ment.

283. SEC. XXII. On the last day of the attendance of any witness, in each term, it shall and may be lawful, on application of such witness, to exhibit his account for attendance, against the person or persons at whose suit he or they may have been summoned; and the judge, or presiding justice, shall examine and certify the same under his hand, which shall be countersigned by the clerk; whereupon, such account so certified, shall have the force and effect of an execution, and may be levied by the sheriff or constable, according to the amount thereof, off the goods and chattels of such party, in like manner as in cases of other executions: *Provided, nevertheless*, that where any witness shall claim and levy for more than is really due, such witness shall forfeit and pay to the party injured, four times the amount of the sum so unjustly claimed. And no party cast in any suit shall be taxed for more than the cost of two witnesses to any material point in any cause, which shall be specially certified by the court trying the same. Nor shall any party be allowed to tax costs for different witnesses to different material points, where the same witnesses shall be sufficient in the opinion of the court, to prove such material points.—[See 285.]

Liability of  
Witness  
claiming too  
much.  
Only two  
Witnesses to  
material  
point.

Interrogato-  
ries may be  
made out and  
com. issue to  
examine non-  
resident Wit-  
ness.

284. SEC. XXIII. Where any witness resides out of the State, or out of any county in which his testimony may be required, in any cause, it shall be lawful for either party, on giving at least, ten days' notice to the adverse party, or his, her or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court, in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit. And such examination shall be read at the trial, on motion of either party.

### *Subpœna.*

STATE OF GEORGIA, }  
Houston County. }

*To James Lewis of said County—Greeting.*

You are hereby commanded, that laying all other business aside, you be and appear at the *Superior Court*, to be held in and for said County, on the *fourth Monday in October* next; then and there to be sworn as a witness for the *Plaintiff*, in the cause of *John Doe* against *Richard Roe*, in an action of *Assumpsit*, in said Court pending. Fail not under the penalty of the law.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

### *Affidavit on the back of the Subpœna.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *James Lewis*, the Witness in said writ mentioned,  
who after being sworn saith, that he attended Court *six* days in obe-  
dience to this Subpœna. Amount due *four dollars and fifty cents.*

Sworn to and subscribed  
before me, this *October 30, 1859.* }  
*James Mack, J. P.*

JAMES LEWIS.

Examined and approved—*William H. Miller, Clerk.*

AN ACT to amend the laws of this State, pointing out the manner of collecting witnesses' fees for their attendance under Subpœna, in certain cases.—*Approved Nov. 26, 1842.*

285. SEC. I. *Be it enacted*, That from and after the passage of this act, in the superior and inferior courts of this State, it shall not be necessary for the judge or presiding justice to examine and sign the accounts of witnesses serving under subpœnas, as is now required by law, but the same being examined and signed by the clerk of such court, shall have the same force and effect as now directed by law.

Judge not required to sign Subpœna.

All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to enable parties litigant in the Superior and Inferior Courts of this State, to compel the production of written Testimony, when the same may be in the possession of persons not parties to the cause, and residing without the County where such cause is pending. And for other purposes.—*Approved Dec. 19, 1829.*

*Whereas*, parties litigant in the Courts of this State, frequently suffer great inconvenience, and sometimes gross injustice, by reason of the difficulty of procuring written Testimony which may be necessary to the successful prosecution or defence of his cause, where the same happens to be in the possession of persons not parties to the cause, and residing without the County in which the cause is pending; for remedy whereof—

286. *Be it enacted*, That from and after the passing of this act, when any deed, bond, note, or other writing, which it may be necessary to use as testimony in any cause which now is, or may be hereafter pending in any of the superior or inferior courts of this State, may be in the possession of any person not a party to said cause, and not resident within the county in which said cause is pending, the clerk of the court in which said cause is pending shall, upon the application of the party (or his attorney) desirous of procuring such testimony, issue a subpœna *duces tecum*, directed to the person having such deed, bond, note or other writing, in his possession, and requiring him to be and appear at the next term of said court, and to bring with him into said court, the paper desired to be used as testimony. Which said subpœna *duces tecum* shall be served thirty days before the court to which it is made returnable, by a sheriff, constable, or some private person. And the return of the sheriff, constable, of such service, or the affidavit of such private person, shall be sufficient evidence that the subpœna was duly served.

Papers in hands of third persons may be required to be produced in Court by Subpœna *Duces Tecum*.

How served.

287. SEC. II. When a subpœna shall be issued and served in terms of the first section of this act, and the person whose attendance is thereby required shall fail to comply with the requisitions thereof, it shall be the duty of the court, on motion, to issue an attachment against such defaulting witness, returnable to the next term of said court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such failure, which shall be judged of by the court; but shall nevertheless be subject to the action of the person at whose suit such witness shall have been summoned, for any damage which he, she or they may have sustained by reason of such failure: *Provided*, nevertheless, that if the person so subpœned, shall within ten days after the service of such subpœna, deliver to the party at whose instance the subpœna was sued out, or his attorney, or file in the office of the clerk of the court from which such subpœna issued, the paper, the production of which is required by such subpœna; or shall deliver to the said party or his attorney; or shall file in the said office his affidavit, that the said paper is not

Person failing to attend, may be fined by the Court and sued by the party.

Witness may relieve himself from liability.



in his power, custody, possession or control, nor was it at the time of serving said subpœna, then and in that case, such delivery or filing of the paper so sought as aforesaid, or of such affidavit, shall be considered in full and complete compliance with the requisitions of such subpœna *duces tecum*.

288. SEC. III. In any case now pending, or which may hereafter be pending in the superior or inferior courts of this State, where any party shall pursue the course herein-before pointed out, but who is unable thereby to procure such written instrument, such party shall be permitted to go into parol evidence of the contents of such written instrument.

SEC. IV. All laws and parts of laws militating against this act, are hereby repealed.

STATE OF GEORGIA, }  
Houston County. } *To Rufus Felder, of the County of Bibb—Greeting.*

You are hereby commanded and required, that laying all other business aside, you be and appear at the *Superior Court* to be held in and for the County aforesaid, on the *fourth Monday in October* next. And bring with you and produce in said Court [*here set out the paper in the Witness's possession, which the party desires to use on the trial, so that the witness may understand the object of the Writ.*] Which *Deed of Conveyance* is in your possession, and which is intended to be used as evidence by the *Plaintiff*, in an action of *Ejectment* pending in said Court; in which action *John Doe* is Plaintiff and *Richard Roe* Defendant. Herein fail not.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.* WILLIAM H. MILLER, Clerk.

### *Affidavit of the Witness.*

STATE OF GEORGIA, }  
Houston County. } In person appeared before the undersigned, *Rufus Felder*, who after being sworn saith, in answer to a Subpœna *Duces Tecum*, *this day* served on him, that he has not now, nor had he in his possession at the time of the service of said Subpœna, [*here set out the paper,*] nor is said *Deed of Conveyance*, in his power, custody, possession, or control, in any manner whatever.

Sworn to and subscribed,  
before me, this *June 1, 1859.*  
*James Webb, J. P.*

RUFUS FELDER.

AN ACT to compensate persons who may be compelled to attend the Superior Courts of this State, as Witnesses in behalf of the State; in Counties other than where such person or persons may reside.—*Approved Dec. 30, 1836.*

289. SEC. I. From and after the passage of this act, that any person or persons who may be compelled, by subpœna or recognizance, to attend any of the superior courts of this State, as a witness on the part of the State, in counties other than where such person or persons reside, shall receive for each day, while he or she may be in attendance on said court, the sum of two dollars; and the like sum of two dollars for every thirty miles he, she or they may travel, in going to and returning from said court. Which said several sums shall be taxed in the bill of cost and paid for out of the county funds, in such county as the case may be pending, as soon as such case may be disposed of by said court.

State's Witnesses to be paid, and how.

290. SEC. II. Any person or persons who may attend the superior courts as above directed, shall be entitled to such pay as is therein stipulated, whether there be a conviction of the defendant or not, upon his making affidavit (before some judge of the superior, or justice of the inferior court, or justice of the peace,) to the number of days which he or she has been in attendance on said court, and the number of miles he or she will travel, in coming to and returning from said court. Which said affidavit must be signed by the presiding judge and countersigned by the clerk of said court; and in that case it shall become a warrant on the county treasurer, or clerk of the inferior court of such county wherein the witness has been in attendance. Witness to be paid, whether party convicted or not.

291. SEC. III. Nothing herein contained shall be so construed as to prevent the cost being collected in the same manner as heretofore pointed out by law, from any defendant or defendants in State cases. Costs to be collected as usual.

292. SEC. IV. So much of said cost when collected, as has been paid out by the county treasurer, or the clerk of the inferior court, to witness or witnesses who may reside without the limits of such county, shall be paid over by the sheriff or clerk of the superior court, to such county treasurer or clerk of the inferior court as may have paid the same, and be applied to county purposes. And refunded to County Treasury.

### *Affidavit of the Witness.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
*Houston* County. } *John Doe* of the County of *Jones*, in said State,  
 who being sworn saith, that he attended the Superior Court of said County of *Houston*, as a Witness on behalf of the State of Georgia, in the prosecution of *Richard Roe* for the crime of *Murder*, *six* days. And deponent further saith that he will have travelled, in coming to and returning from said Court, *sixty* miles.

Amount due, \$16 00.

Sworn to and subscribed,  
 before me, this *April* 25, 1859.  
*James Mack, J. P.*

JOHN DOE.

Examined and approved—*William H. Miller, Clerk.*

AN ACT to remove all disabilities whatever from persons in this State from Testifying in any of the Courts thereof; or having their oath or affirmation, where the same is necessary to secure any right or interest whatever, by reason of any Religious Opinion he, she or they may entertain or express.—*Approved Dec. 11, 1841.*

293. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, no person shall be excluded from testifying as a witness in any of the courts of law or equity in this State; or deprived of his, her or their oath or affirmation, touching any matter or thing where an oath or affirmation is necessary to secure any right or interest whatsoever, by reason of any religious opinion such person or persons may entertain or express: *Provided*, nothing in this act shall prohibit such disabilities going in evidence to the jury, to affect the credit of such witness or witnesses. Religious Opinions extend to credibility of Witness, not to competency.

AN ACT for the ease of Dissenting Protestants within this Province who may be scrupulous of taking an Oath, in respect to the manner and form of administering the same.—*Approved Dec. 13, 1756.*



*Whereas*, many inconveniences may arise in this Province, through the scruples of divers Protestant Dissenters within the same, of good estates and abilities, who refuse to take an oath by laying their hand on the Holy Evangelists, whereby the public is deprived of their services as Jurymen. *And whereas*, acts of toleration and indulgence to Protestant Dissenters have been found of beneficial tendency to other his Majesty's Provinces, and may in a particular manner, be so to this infant Province. In order that such dissenting Protestants may be enabled and compelled to serve on all Juries, and to give Evidence in all cases, and that the acts of such Protestant Dissenters may be valid and effectual, in respect of the manner and form of taking and administering oaths—

An Affirma-  
tion as valid  
as an oath.

294. *Be it enacted*, that immediately after passing of this act, any person who shall appear in any of the courts of judicature, or before any judge or magistrate in this Province, either as juror, witness, party or otherwise, in any cause, civil or criminal, and shall make and distinctly repeat a solemn and conscientious declaration and affirmation (according to the form of his profession), in any matter, cause or thing, wherein an oath is required by law, in the following words: "I, A B, do swear in the presence of Almighty God, as I shall answer at the great and awful day of judgment, that, (as the case may be)—so help me God." And such solemn and conscientious declaration and affirmation shall be deemed, held, adjudged and taken to be valid and effectual, to all intents, constructions and purposes whatsoever, in the same manner as if such person had taken an oath on the holy evangelists of Almighty God. And that all and every such person and persons as shall be convicted of falsely and corruptly affirming and declaring any matter or thing, which (if the same had been an oath taken on the holy evangelists,) would by law amount to wilful and corrupt perjury, shall incur the same penalties, disabilities and forfeitures, as persons convicted of wilful perjury do incur by the laws of Great Britain.

Form of Affir-  
mation.

Perjury if  
false.

AN ACT to alter and amend the XXIII<sup>d</sup> section of the Judiciary Law of this State, passed February 16, 1799.—*Approved Dec. 16, 1811.*

*Whereas*, the Judiciary Law of this State does not fully embrace the mode necessary to procure Testimony by Interrogatories, as justice in its fullest extent requires—

Certain Wit-  
nesses, al-  
though they  
reside in the  
County, may  
be examined  
by Interroga-  
tories.

295. *Be it enacted, &c.*, That after the passing of this act, it shall and may be lawful where any witness resides out of the State or out of the county, or where any witness resides within the same, and being a seaman, patroon of a boat, stage-driver, mail-carrier, aged or infirm person, [see 301,] and in all other cases where the evidence of any witness cannot be duly obtained in which his or her testimony may be required in any case, it shall be lawful for either party, on giving at least ten days' notice to the adverse party, or his, her or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit; and such examination shall be read on the trial, on the motion of either party. Any rule, order or law to the contrary notwithstanding.

AN ACT to carry into effect the Penal Code of this State, and the Penitentiary System founded thereon.—*Approved Dec. 19, 1816.*

Convicts may  
be examined  
on Commis-  
sion.

296. SEC. XXI. of the rules.—Where any convict confined in the penitentiary, is a witness in any civil cause, depending in any court of this State, and his testimony required, the same shall be taken by commission, and read

at the trial of such civil cause. And in no civil case shall such convict be removed from the penitentiary to give personal attendance at court. But before such commission issues, the party, or his or her attorney, requiring such commission, shall file an affidavit, with the record of the proceedings, that the convict to be examined is a material witness in the cause.

*Affidavit of the Party Applying for the Commission.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. { *John Doe*, who after being sworn saith, that he hath commenced his action of *Assumpsit* in the *Superior* Court of said County, against *Richard Roe*. That said action is now pending in said Court, and that *Charles Smith*, a convict in the Penitentiary, is a material witness for deponent in said action. And that deponent desires to take the Testimony of said *Charles Smith* by Commission, according to the statute in such case made and provided.

Sworn to and subscribed,  
before me, this May 1, 1859.  
*Simpson Moore, J. P.*

JOHN DOE.

AN ACT to regulate the mode of taking Testimony by Commission and *de bene esse*, within this State. And to alter and amend the several laws relating thereto.—*Approved Dec. 20, 1823.*

297. The act entitled “an act the more effectually to insure the testimony of witnesses going beyond seas, or removing without the jurisdiction of the State, and aged and infirm persons,” passed the 8th day of December, 1806, be and the same is hereby re-enacted and declared to be operative and effectual, in all cases pending or which may be brought in the several courts of this State.—[*See 301 for the act revived.*]

298. SEC. II. In all cases which are or shall be pending in any of the courts of this State, when any one person is the only witness to any material fact in any case, it shall and may be lawful to examine such witness *de bene esse*, on complying with the provisions of the aforesaid act; in so far as the same are applicable to such case. And that the examination so taken shall be read in evidence in such cause, on the terms and under the restrictions specified in said act.

Act of 1806  
revived.  
Testimony *de bene esse* when  
allowed.

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to point out and regulate the manner of taking the Testimony of Females, in certain cases.—*Approved Dec. 19, 1829.*

299. From and after the passage of this act, when the testimony of any female shall or may be required in any of the superior or inferior courts which may be held in this State, criminal cases only excepted, it shall and may be lawful for either party, on giving at least ten days' notice to the adverse party, or his, or her, or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses on such interrogatories as the parties may exhibit. And such examination shall be read at the trial, on motion of either party.—[*And see 301.*]

Females may  
be examined  
by Commis-  
sion, in civil  
cases.

300. SEC. II. If any person, as above-recited, shall refuse to appear before commissioners appointed to take her or their examination; or appearing, shall refuse to answer such legal interrogatories as shall be annexed to said commission, and exhibited to her or them, it shall be lawful for either

Witness refus-  
ing to appear  
or Answer.



of said commissioners, or the party upon whose application the said commission was issued, to proceed in conformity to the laws now in force, pointing out the mode of proceeding in cases of failure or refusal to attend or answer interrogatories, in other cases.—[See 302.]

SEC. III. All laws or parts of laws militating against the above-recited act, are hereby repealed.

AN ACT to amend “an act to regulate the mode of taking Testimony by Commission and *de bene esse*, within this State. And to alter and amend the several laws relating thereto,” approved 20th December, 1823.—*Approved Dec. 28, 1838.*

Act of 1806  
revived and  
amended.

Certain Wit-  
nesses may be  
examined by  
Commission.

301. SEC. I. *Be it enacted*, That the act (for which this is amendatory) more effectually to insure the testimony of witnesses going beyond sea, and aged and infirm persons, passed on the 8th day of April, 1806, which had been repealed, and again re-enacted and declared to be operative and effective, in all cases pending or which may be brought in the several courts of this State, by act of 20th December, 1823, be amended [so] as to read as follows, to wit: That in case either plaintiff or defendant may deem any witness or witnesses, material in any cause or causes pending in any of the courts of law and equity of this State, and who are going beyond seas, removing without the county, or beyond the jurisdiction of the State, or whose official or other business, would require his absence from the county, at the term of trial of said cause, or from age or other bodily infirmity, may be unable to attend court, it shall and may be lawful to examine any such witness or witnesses under commission, or [on] serving and filing interrogatories, in the manner prescribed by law, in cases where witnesses reside out of the county: *Provided*, that in case the person or persons whose testimony shall have been taken, return or be able to attend, that then and in that case, such written testimony shall not be received or read.—[See 307.]

SEC. II. All laws, or parts, or amendments of laws militating against this amendatory act, be and the same are hereby repealed.

AN ACT to point out and regulate the manner of taking Testimony by Commissioners, in certain cases.—*Approved Dec. 22, 1840.*

Witness fail-  
ing to attend  
Commission-  
ers, what may  
be done.

Order of  
Judge.

302. SEC. I. *Be it enacted*, That when any witness shall fail, refuse or neglect, to appear before commissioners for the purpose of answering interrogatories appended to a commission issuing from any court in this State, in which court the case may be pending, for which said interrogatories are intended to be taken; upon the application of the commissioners therein named, it shall and may be lawful for the party at whose instance said interrogatories are to be taken, his, her or their attorney, or for either of the commissioners, to make affidavit of such failure, refusal or neglect. And upon application made to any judge of the superior, or justice of the inferior court, of any circuit or county in which said witness may be when applied to, to be examined, accompanied with such affidavit, [for such judge or justice,] to issue an order, to all and singular, the sheriffs, constables and coroners of this State, commanding them to bring said witness before him. And upon such judge or justice being satisfied of the legality of such interrogatories, it shall be the duty of such judge or justice to order the officer having said witness in custody, to deliver said witness to the jailer of such county, and to be by said jailer confined in the common jail of said county, until he or she shall answer the interrogatories propounded to him or her, to said commission attached.

303. SEC. II. Nothing herein contained shall be so construed as to

prevent the court from which said commission issued, from punishing said witness for contempt of said court. And that all laws and parts of laws militating against this act, be and the same are hereby repealed. Witness punishable for contempt.

### *Party's Affidavit.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
 Houston County. } *John Doe*, who after being sworn saith, that he has commenced his action of *Assumpsit* in the Superior Court of the County of *Bibb*, in said State, against *Richard Roe*, which action is now pending in said Court. That a Commission with certain Interrogatories thereunto annexed, issued from said Court, in conformity to law, to take the Testimony of *Charles Smith*, of the County of *Houston*, a material Witness in said case, on the part of deponent. That said Commission has been presented to *James West* and *John Jones* as Commissioners. That said Commissioners have required the personal attendance of said *Charles Smith* in order that his testimony might be taken; but said *Charles Smith*, without any legal excuse, fails, (refuses or neglects, as the case may be,) to appear before said Commissioners for the purpose aforesaid.

Sworn to and subscribed,  
 before me, this *May 1*, 1859.  
*James Mack, J. P.*

JOHN DOE.

### *Order of the Judge.*

CHAMBERS, *May 1*, 1859.

STATE OF GEORGIA, } To all and singular, the Sheriffs, Constables, and  
 Houston County. } Coroners of said State.

Whereas, I have been informed by the affidavit of *John Doe*, that he has commenced his action of *Assumpsit*, in the Superior Court of the County of *Bibb* against *Richard Roe*, which action is now pending in said Court. That a Commission with certain Interrogatories thereunto annexed, issued from said Superior Court of the County of *Bibb*, in conformity to law, to take the Testimony of *Charles Smith*, of the County of *Houston*, a material Witness in said case, for the deponent. That said Commission has been presented to *James West* and *John Jones* as Commissioners. That said Commissioners have required the personal attendance of said *Charles Smith*, in order that his Testimony might be taken, but that said *Charles Smith*, without legal excuse, fails to appear before said Commissioners for the purpose aforesaid: you and each of you are therefore, hereby commanded, to arrest the body of the said *Charles Smith* and bring him before me at *Perry* in said County, by *ten o'clock* of the forenoon of the *second* instant, that he may be dealt with as the law directs. Herein fail not.

Given under my hand and official signature,

HENRY G. LAMAR, J. S. C. M. D.

AN ACT to make valid all Commissions which have heretofore been, or may hereafter be issued in Blank, for the purpose of taking Testimony in any case arising, or which may have arisen in the Courts of Law and Equity of this State.—*Approved Feb. 13*, 1850.

304. SEC. I. *Be it enacted*, That from and after the passage of this act,



Commissions may issue in Blank. all commissions which have heretofore been, or may hereafter be issued in blank, for the purpose of taking testimony, in any case pending, or arising in the courts of law and equity in this State, shall be valid and as effectual as if the names of the commissioners had been inserted by the officer issuing the same.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to regulate the taking of Testimony by Interrogatories, for the Courts of this State. And to amend an act entitled "an act to authorize parties to compel Discoveries, at common law," approved December 17th, 1847.—*Approved Feb. 23, 1850.*

Commissions may issue in Blank. 305. SEC. I. *Be it enacted*, That in all cases in the superior and inferior courts of this State, where it may become necessary to take testimony by interrogatories as heretofore practised, commissions may issue in blank, in so far as relates to the names of the commissioners; but the names of witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.

Discovery at common law. 306. SEC. II. When any person, either plaintiff or defendant, shall desire to file his, her or their written interrogatories, for the purpose of compelling the discovery contemplated by the act entitled "an act to authorize parties to compel discoveries at common law," approved Dec. 17th, 1847, he, she or they shall be authorized to do so either in term-time or vacation of the superior or inferior court, and obtain an order from a judge of said court, requiring the adverse party to answer the same in writing, according to the provisions of the act of which this is amendatory.—[*See 317.*]

AN ACT to amend the act of eighteen hundred and thirty-eight, regulating the taking Testimony in certain cases.—*Approved Jan. 5, 1852.*

Evidence of single Witness may be taken by Interrogatories. 307. SEC. I. *Be it enacted*, That in addition to the cases already specified in the act assented to twenty-eighth of December, eighteen hundred and thirty-eight, the party plaintiff or defendant, where he has but a single witness to prove any particular point, or fact, in his case, may take his testimony by commission, exactly as in cases provided for by said act of eighteen hundred and thirty-eight, with the restrictions and limitations therein set forth.—[*See next Act.*]

AN ACT for the Perpetuation of Testimony in certain cases.—*Approved March 5, 1856.*

Whereas, the present mode of Perpetuating Testimony in suits which cannot be commenced, is both costly and difficult of application; for remedy whercof—

Mode of Perpetuating Evidence. Application to Judge. Judge's Order. Commissioner. 308. SEC. I. *Be it enacted, &c.*, Whenever any person desiring to perpetuate testimony for a suit which cannot on any account, be commenced in any court of this State, shall make written application to any judge of the superior court of this State, stating the grounds of the application, the facts expected to be proved and by whom, said judge shall pass an order, endorsed on said application, requiring the clerk of the superior court of the county where the witness resides, to issue a commission directed to any attorney-at-law, [*not interested,*] in the usual form, to examine said witness upon the interrogatories filed by the applicant and the opposite party, should the latter file any. Which commission is not to issue however, until the applicant has given the opposite party five days' notice,

and served him with a copy of the interrogatories filed in the clerk's office, as aforesaid. Which opposite party shall have the like privileges, if he desires, of filing cross-interrogatories, with said clerk. All of which direct and cross-interrogatories, if filed, are to be attached to the commission before delivery by the clerk to the party applying. But if the opposite party fails to file any cross-interrogatories, the applicant shall not be thereby delayed or deprived of the commission.

Notice must be given.

Interrogatories may be Crossed.

309. SEC. II. The said commissioner shall, after executing said commission in the usual manner, return it to the clerk of the superior court from whence the commission issued, in the mode now in use for returning commissions, who shall when he receives the same, after using the usual precautions and regulations, as to the correct delivery of the same, safely file the same away in a secure place, to be produced by him for publication whenever ordered so to do, by any proper tribunal.

Commission how returned.

310. SEC. III. The commissioner shall receive for his fee, before delivering up the papers, the sum of five dollars; and the clerk, before issuing the commission, shall receive the usual fee.

Fees of Commissioner and Clerk.

311. SEC. IV. The testimony so taken shall be of the same force and effect, and used in the same way, as if it had been taken under a bill in equity, filed for that purpose.

Force of Testimony.

312. SEC. V. The clerk aforesaid, shall file away the written application and order, after entering the same on the minutes of the court, with the commission, when returned.

Papers must be filed away.

313. SEC. VI. In case the witness proposed to be examined, resides out of the State, then the commission shall be issued by the clerk of the superior court of that county where the party making the application shall reside.

Where Wit. resides out of the State.

### *Application of Party.*

STATE OF GEORGIA, } *To the honorable Henry G. Lamar, Judge of the*  
Houston County. } *Superior Courts of the Macon District.*

The application of *John Doe* sheweth, that *Richard Roe*, late of said County, did, in his lifetime, and just before his death, commit *Trespass* on the Real Property of Applicant, whereby an action has accrued to Applicant. That said *Richard Roe* departed this life on the *first* day of *May*, eighteen hundred and *fifty-nine*, and, therefore, Applicant cannot commence his action for the *Trespass* aforesaid. Applicant expects to prove by *Charles Smith*, of said county, that said *Richard Roe* entered upon *Land* of Applicant, to wit, *lot of Land* number *forty-nine*, in the *tenth* district of said County, on the *twentieth* day of *April*, eighteen hundred and *fifty-nine*, and cut down and removed away from said *lot of Land*, a large number, to wit, *one hundred Trees*, which *Trees* were of the value of *two hundred dollars*. Wherefore, Applicant prays your honor to issue an order directed to *William H. Miller, Esq.*, Clerk of the Superior Court of said County, requiring him to issue a Commission to such Commissioner as your honor may appoint, that said *Charles Smith* may be examined upon Interrogatories filed by Applicant, in order that the Testimony of said *Charles Smith* may be perpetuated, according to the statute in such case made and provided. This *May 10, 1859*.

THOMAS FELDER, *Applt's Att'y.*



*Order of the Judge.*

STATE OF GEORGIA, } *To William H. Miller, Clerk of the Superior Court*  
 Bibb County. } *of Houston County—Greeting.*

*Whereas*, by the within application of *John Doe*, I am informed that the Applicant has a good cause of action against the estate of *Richard Roe*, deceased, late of said County, which action cannot, on any account, be commenced in any Court of this State. And, *whereas*, by said Application I am informed that *Charles Smith* is a material witness for the Applicant, to prove the facts necessary to support said action, when it can be instituted. You are, therefore, hereby directed to issue a Commission, directed to *John M. Giles, Esq.*, Attorney-at-Law, authorizing him to examine said *Charles Smith* upon certain Interrogatories filed in your office by the Applicant. And after the examination of said Witness, said Commissioner is required to deposit the Packet in the Clerk's office. And you, the said Clerk, will receive and safely keep said Packet, until you are required to produce it, according to law.

*Given under my hand and official signature, at Chambers, this May 11, 1859.*

HENRY G. LAMAR, J. S. C. M. D.

AN ACT for pointing out the method of Compelling persons residing in this State, to give Evidence in causes pending in another.—*Approved Dec. 16, 1794.*

*Whereas*, much inconvenience has arisen to individuals, from no compulsory process having been adopted in the different States, to oblige the citizens or residents thereof, to give evidence in suits pending in other States; for remedy whereof, as far as it might be occasioned by persons residing within the State of Georgia—

Witness in this State must testify in cases pending in another. When he refuses what may be done. When and where he must attend.

314. SEC. I. *Be it enacted*, That if the testimony of any persons residing within the said State shall be required in any suit pending in any court of record in either of the United States, and he, she or they, shall refuse to appear before commissioners appointed to take his or her examination, under a commission properly issued and authenticated, agreeably to the laws and rules of the courts of the State from which it shall be sent; or appearing, shall refuse to answer to such legal interrogatories as shall be annexed to the said commission and exhibited to him, her or them, it shall be lawful for either of the said commissioners, or the party upon whose application the said commission was issued, to apply to any judge of the superior courts of this State, or justice of the inferior court of the county, within which such person whose testimony is required may reside, and upon producing before him such commission, and his being satisfied of its regularity, and on affidavit being made of such refusal, he shall issue a subpoena in the usual form, directed to such person or persons as aforesaid, requiring him, her or them, to be and appear before the said commissioners, at a certain time and place, to answer to such legal interrogatories as may be annexed to the said commission, and then exhibited to him: *Provided*, that he shall not be required to attend such examination and give answer to the said interrogatories, within less than two days after the service of the said subpoena, neither shall he be obliged to attend for such examination out of the county where he resides, nor more than ten miles from the place of his residence. And upon due service of the said subpoena upon such person or persons, the same shall be returned to the commissioners on or before the time appointed for the examination and the service

of such subpoena, proven by the return of the proper officer. And on the refusal or neglect of such person or persons to comply with its mandate, indorsed on or annexed to the said subpoena, and returned to the superior or inferior court, as the case may require, of the county in which such person or persons reside, he, she or they, shall be subject for such neglect or refusal, to all the pains and penalties to which such person or persons would have been subject for a similar default in any cases pending in the courts of this State.

315. SEC. II. The person or persons whose evidence shall be required as aforesaid, shall if they or any of them shall require the same, be entitled to the same fees or pay, as persons summoned to give evidence in the superior or inferior courts of this State.—[*And see next Act.*]

AN ACT to extend the operation of the act passed on the 16th day of December, 1794, entitled “an act for pointing out the method of compelling persons residing in this State, to give Evidence in causes pending in another.”

—*Approved Dec. 21, 1839.*

316. SEC. I. That all the provisions of the said recited act, be and the same are hereby extended to the cases of the persons who may refuse to appear before the commissioners and give evidence under commissions issued from any of the counties of this State.

Witness in this State to give Evidence, etc.

### *Affidavit of the Party.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *John Doe*, who, after being duly sworn, saith, that he has commenced, in the Court of *Common Pleas* of the State of *South Carolina*, *Chesterfield District*, his action of *Assumpsit* against *Richard Roe*, and that said action is now pending in said Court. That *Charles Smith*, of the County and State first aforesaid, is a material Witness for deponent, in said action of *Assumpsit*. That a Commission to take Evidence (having certain Interrogatories thereunto annexed,) in legal and proper form, agreeably to the laws of *South Carolina*, issued in said case, to take the Testimony of said *Charles Smith*. That said Commission has been presented to *John West* and *John Jones*, Commissioners, who have required the personal attendance of said *Charles Smith*, in order that his Testimony might be taken; but that said Witness, without any legal excuse, *refuses* (or neglects, as the case may be,) to attend upon said Commissioners for the purpose aforesaid.

Sworn to and subscribed, }  
before me, this *May 1*, 1859. }

*John Ragin, J. I. C.*

JOHN DOE.

### *Subpœna by the Judge.*

STATE OF GEORGIA, } To *Charles Smith*, of the County of *Houston*.  
Bibb County. } You are hereby required, that laying all other business aside, you be and appear before *John West* and *John Jones*, Commissioners, by *ten o'clock* in the *forenoon* of the *12th* instant, in the town of *Perry*, in said County of *Houston*, then and there to be sworn, and to make true and full Answers to certain Interrogatories, then and there to be exhibited to you. Evidence to be used in an action of *Assumpsit* pending in the Court of *Common Pleas*, of *Chester-*



*field District, South Carolina, in which action John Doe is plaintiff and Richard Roe defendant. Fail not.*

*Given under my hand and official signature, at Chambers, this May 1, 1859.*

HENRY G. LAMAR, J. S. C. M. D.

AN ACT to authorize Parties to compel discoveries at Common Law.—*Approved Dec. 17, 1847.*

317. SEC. I. *Be it enacted*, That from and after the passage of this act, that any party, plaintiff or defendant in any action at common law, pending in any superior or inferior court of this State, wishing a discovery from the adverse party, to be used in evidence at the trial of such action, may file written interrogatories [*directed*] to such party, and call upon him to answer the same in solemn form, on oath or affirmation. And if upon such interrogatories being filed, it shall appear to the court, by the oath of the party filing the same, or otherwise, that answers to such interrogatories will be material evidence in the cause, and that the interrogatories themselves are pertinent, and such as the adverse party would be bound to answer upon a bill of discovery in a court of chancery, the court shall allow such interrogatories, and shall make an order, [*see 322,*] requiring the adverse party to answer the same in writing, and in solemn form, on his oath or affirmation. And the answer to such interrogatories being so given and filed, shall be evidence at the trial of the cause, in the same manner, and to the same purpose and extent, and upon the same condition in all respects, as if the same had been procured upon a bill in chancery for discovery, but no further or otherwise. And if the party to whom interrogatories shall be so propounded, and who shall be so required by the court to answer the same, shall in sixty days after notice and copy of such interrogatories served on him, fail to make answer in manner aforesaid, or shall answer the same evasively, the court may attach him and compel him to answer in open court, or it may continue the cause and require more direct and explicit answers. Or, if the party to whom such interrogatories shall be propounded, be defendant in the action, it may set aside his plea or pleas and give judgment against him by default. Or, if the plaintiff, may order his suit to be dismissed with cost; as shall in the discretion of the court, be deemed most just and proper. *Provided*, that nothing in this act contained, shall preclude any party to such action, from exhibiting his bill in chancery for discovery, touching the same matters.—[*See next Act.—And see 325, &c.*]

Discovery allowed at com. law, by Interrogatories.

Order by the Judge.

Answer made Evidence.

Party failing to answer may be attached.

Suit or defence may be dismissed.

Party may file Bill.

AN ACT amendatory of an act assented to on the 17th December, 1847, entitled “an act to authorize parties to compel Discoveries at Common Law.”—*Approved Feb. 23, 1850.*

318. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any party, plaintiff or defendant, in any action at common law, pending in any superior or inferior court of this State, shall wish to avail himself or herself of the provisions of the act assented to on the 17th December, 1847, entitled “an act to authorize parties to compel Discoveries at common law,” it shall and may be lawful for such party to make out and present his or her interrogatories to the court in which such action is or may be pending, to the judge of the superior court, or a justice of the inferior court, in vacation. And when such interrogatories are presented in vacation, and are allowed by such judge or justice, the said judge or justice shall make and grant an order, requiring the adverse party to answer the same in writing, in solemn form, on oath or affirmation. Which order, together with said interrogatories, shall be returned to the clerk of the court in which such action is pending, and shall be filed in his office. And the said order shall be as good and effectual to compel

Order of J'dge in vacation.

the discovery sought for, as if the same had been granted in court. Any law, usage or custom, to the contrary notwithstanding.

319. SEC. II. When the plaintiff in any cause shall reside out of the county in which the action may be pending, a service of a copy of said interrogatories and order upon the attorney of the plaintiff, shall be sufficient service on such plaintiff. Non-resident Plaintiff how served.

320. SEC. III. The provisions of the act amended by this act, and of this act, shall be applicable to the court of Common Pleas of the city of Augusta, and the court of Common Pleas and Oyer and Terminer of the city of Savannah. Extended to City Courts.

321. SEC. IV. Where it shall be made to appear to the court, that the time allowed for the answer to the interrogatories to come in, shall from any cause, not be sufficient, the court may allow such further time as the circumstances of the case may require.—[*And see next Act.*] Time to answer allowed.

### *Order of the Judge, or Justice.*

JOHN DOE  
vs.  
RICHARD ROE. } *Assumpsit* in *Houston Superior Court*, returnable to the *October Term, 1859.*  
Whereas, it has been made to appear to me, by the oath of the Defendant, in the above cause, that he has filed in the Clerk's office of said Court, Interrogatories to be propounded to the Plaintiff. And it appearing to me that the Answers to said Interrogatories will be material Evidence on the trial of the cause; that the Interrogatories themselves are pertinent, and such as the Plaintiff would be bound to Answer upon a Bill of Discovery in a Court of Chancery. Therefore, it is hereby ordered, that the Plaintiff, above-named, be and he is hereby required and directed, to Answer said Interrogatories, so filed as aforesaid, fully, correctly and in solemn form, on his oath or affirmation, within *sixty* days from the date of this order.

*Given under my hand and official signature, in Chambers, this August 10, 1859.*

HENRY G. LAMAR, J. S. C. M. D.

AN ACT to amend an act passed the 17th of December, 1847, to authorize parties to compel discoveries at common law. *Approved Feb. 20, 1854.*

322. SEC. 1. *Be it enacted*, That from and after the passage of this act, the following shall be an additional section of said act, to wit: Any party, plaintiff or defendant, in any action at common law, pending in any superior, inferior or justices' courts of this State, wishing a discovery from, or on the evidence of the adverse party on the trial of such action, may apply to the clerk of said superior or inferior courts, or to the justices of the peace in whose courts said action may be pending, in case the party whose evidence is desired, resides in the county where said case is pending, for a subpoena, requiring said party to be and appear at said court and testify in said action, as other witnesses now by law are required to do. Which subpoena shall be personally served thirty days before the term of the court at which he is required to attend. And in case said party shall fail or refuse to be and appear, and testify in said action as required, then and in that case said cause shall be subject to the same continuances as are now allowed by law, for the absence or non-attendance of other witnesses; and after said continuances are exhausted, said action shall be dismissed. *Provided*, it be the plaintiff who refuses to appear and testify as aforesaid. Or, if the party who fails or refuses to be and appear as aforesaid, be the Act of 1847 amended.

Party may be subpoenaed.

Continuance allowed.



Party refusing to attend, defendant in said cause, his plea or pleas and answers, [*answer*,] if he has filed any, shall be stricken out and judgment given against him by default. Or such other order may be taken and had in said cause, as in the discretion of said court may be just and proper. And in the event said parties,

Party removing, what to be done. plaintiff or defendant, whose evidence or discovery may be required in any action pending in either of said courts, shall or may, either before, at the time or after the commencement of said action, and before the time of giving in said testimony, remove or do reside out of said county in which said action is pending, then and in that case interrogatories may be filed as is now usual for other witnesses under the same rules and regulations, as is now required by law. And in case of a refusal or failure to answer

Party must answer fully. the same; or in case they are answered evasively, the same rule or order may and shall be had as herein-before provided in case of failure or refusal to attend and answer where said parties are subpœnaed to attend, in case they reside in said county.

Testimony to be taken down and filed. 323. SEC. II. That the testimony given in under the provisions of this act shall be taken down by order of the court, and made a matter of file in the clerk's office.—[*And see next Act.*]

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to make certain persons therein mentioned competent Jurors and Witnesses. And to declare the law therein.—*Approved Feb. 13, 1854.*

Who may be Jurors and Witnesses where a County is party. 324. SEC. 1. *Be it enacted*, That from and after the passage of this act, all inhabitants of counties of this State, who are competent jurors or witnesses in other case be declared and holden to be competent jurors or witnesses, in any case, in any court where such counties are parties to the suit, or interested therein in their capacity as corporations or quasi-corporations. Any practice, usage or custom, to the contrary notwithstanding.

AN ACT to amend an act passed the 17th day of December, 1847, to authorize Parties to compel Discoveries at Common Law. And for other purposes therein mentioned.—*Approved Dec. 22, 1857.*

Parties may be examined as Witnesses. 325. SEC. I. From and after the passing of this act, it shall be lawful, in all cases that may be pending in law or equity, in this State, for plaintiffs and complainants, to examine defendants as witnesses; and for defendants to examine plaintiffs or complainants, as witnesses, under the same rules and regulations as are now prescribed by law, in relation to other witnesses.

Parties may be brought in to Court as other Witnesses are. 326. SEC. II. Said parties shall be compelled to attend court as witnesses, upon being subpœnaed, in the same manner and within the same time, as is now required by law, in relation to other witnesses. And that the testimony of said parties may be taken by commission, under the same circumstances, and under the same rules and regulations, and in the same manner, as is now prescribed by law, in relation to the taking the testimony of other witnesses by commission. And the testimony of said parties shall be entitled to such weight and consideration with the jury, as they, under all the circumstances, may see proper to give.

Jury to determine weight of Testimony. 327. SEC. III. If the parties, as aforesaid, are present at the time of the trial of any case, they shall be compelled to testify, as provided in the first section of this act, although they may not have been served with a process of subpœna.

Party present must testify, though not subpœnaed, etc. 328. SEC. IV. If the parties aforesaid, or any of them, after having been subpœnaed, as aforesaid, shall fail to appear at court, according to the requisitions of said subpœna, or appearing shall refuse to testify, or



shall fail or refuse to appear and answer before commissioners, (when their testimony is required to be taken by commission,) then and in that case, said cause shall be subject to the same continuances as are allowed, by law, for the absence or non-attendance of other witnesses; and after said continuances are exhausted, said action shall be dismissed, provided it be the plaintiff who refuses to appear and testify, as aforesaid; or if the party who fails or refuses, to be and appear, as aforesaid, be the defendant in said cause, his plea, or pleas and answers, if he has filed any, shall be stricken out, and judgment given against him, by default, or such other order may be taken and had, in said cause, as in the discretion of said court, may be just and proper. And in the event said parties, plaintiff or defendant, whose evidence or discovery may be required in any action pending in either courts, by interrogatories, shall fail or refuse to answer the same, or in any case they are answered evasively, the same rule or order may and shall be had as herein-before provided, in case of failure or refusal to attend and answer, when said parties are subpoenaed.

tinued. Pl'ff refusing, cause to be dismissed. Defendant refusing, Answer to be stricken out, etc.

Party refusing to answer Interrogatories, same order.

329. SEC. V. Nothing in this act shall be construed so as to permit any party to be a witness for himself, on his own motion.

Party not to be witness for himself.

SEC. VI. All laws in conflict with this act, are hereby repealed.

AN ACT to amend an act, approved 19th December, 1829, to point out and regulate the manner of taking the Testimony of Females, in certain cases, so as to include Practising Physicians and School Teachers, in actual employment.—*Approved, Dec. 11, 1858.*

330. SEC. I. From and after the passage of this act, the provisions of the above-stated act, be so amended as to include practising physicians, and school teachers in actual employment in their vocation when the court sits.

Physicians and School Teachers, privilege.

## INTERROGATORIES.

### *Commission.*

STATE OF GEORGIA, } *By his honor Henry G. Lamar, one of the Judges*  
Houston County. } *of the Superior Courts of said State.*

To John Doe, Richard Roe and Charles Smith, Esqrs.—Greeting.

Whereas, there is a certain matter of controversy now pending in the Superior Court for said County, between Arthur Watson, Plaintiff, and Marcus Kunze, Defendant, in an action of *Assumpsit*. And whereas, Samuel Felder, is a material witness in said suit, and cannot attend our said Court, in person, without manifest inconvenience.

Now, know ye, that we reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two (or more) of you, are hereby authorized and required, to cause the said Samuel Felder, personally, to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the Interrogatories hereunto annexed. And the answers to the same being plainly and distinctly written, you are to send the same, closed up, under your hands and seals, to our said Court, to be held on the fourth Monday in October next; together with this writ.

Witness, the honorable Henry G. Lamar, one of the Judges of said Court, this June 1, 1859.

[L. S.]

WILLIAM H. MILLER, Clerk.



*Direct Interrogatories.*

ARTHUR WATSON }  
                   <sup>vs.</sup>  
 MARCUS KUNZE. } *Assumpsit in Houston Superior Court.*

Interrogatories to be exhibited to *Samuel Felder*, a material witness on the part of the *Plaintiff*, and who resides out of the County of *Houston*.

Int. 1. Do you know the parties to the above suit?

Int. 2. Please state all you know, or have heard the *Defendant* say about his owing the *Plaintiff* money. When was it? How much did the *Defendant* say he owed the *Plaintiff*?

Int. 3. State fully and at large, all you know or have heard the *Defendant* say, that will benefit the *Plaintiff*, as if particularly interrogated thereto.

JOHN M. GILES, *Pl'ff's Att'y.*

*Cross Interrogatories.*

Int. 1. Did not the *Defendant* say, in the conversation of which you testify, that he had paid the *Plaintiff* all he ever owed him?

Int. 2. Do you not know from what you have heard the *Plaintiff* say, that the *Defendant* has paid him all the money he ever owed him?

Int. 3. State fully and at large, all you know or have heard the *Plaintiff* say, that will benefit the *Defendant*, as if particularly interrogated thereto.

JAMES A. PRINGLE, *Def't's Att'y.*

*Answers to Direct Interrogatories.*

## GEORGIA—BIBB COUNTY.

ARTHUR WATSON }  
                   <sup>vs.</sup>  
 MARCUS KUNZE. } *Assumpsit in Houston Superior Court.*

By virtue of a Commission to us directed from the *Superior Court* of *Houston County*, we have caused *Samuel Felder*, the witness in said Commission named, to come before us; and said witness being duly sworn, true answers to make to certain interrogatories to said Commission annexed, deposeth and answereth as follows, to wit—

To the 1st Direct Interrogatory he answers—I do.

To the 2d he answers—I was at *Macon*, in said County, on *Saturday last*, and had a conversation with the *Defendant* relative to a suit instituted against him by the *Plaintiff* in the *Superior Court* of *Houston County*, in which conversation he said, he owed the *Plaintiff* one hundred dollars borrowed money.

To the 3d he answers—I know nothing more that will benefit the *Plaintiff*.

*Answers to the Cross-Interrogatories.*

To the 1st Cross-Interrogatory he answers—If in the conversation with the *Defendant*, (referred to in my answer to the 2d. Direct Interrogatory,) he said he had paid the *Plaintiff* all he ever owed him, I do not recollect it.

To the 2d he answers—I do not recollect having heard the *Plaintiff* say, that the *Defendant* had paid him all he ever owed him.

To the 3d he answers—I know nothing more that will benefit the *Defendant*.

Answered, subscribed and  
sworn to before us this *July 10, 1859.*  
*Washington Poe, Com.*  
*Thomas P. Stubbs, Com.*

SAMUEL FELDER.

*Directions how to have Interrogatories executed, etc.*

1st. Fill up the blank left in the Commission with the names of the Commissioners, written out in full.

2d. There must be, at least, two Commissioners ; they should be substantial respectable men.

3d. The Answers may be written on a separate sheet of paper if, as is generally the case, that which contains the Interrogatories is not sufficiently large, and attached to the Commission. The Answers must not be in the hand-writing of any of the parties, or of any Attorney engaged in the case ; nor must they be previously written by any such person and transcribed.

4th. Direct the packet thus:—

ARTHUR WATSON  
vs.  
MARCUS KUNZE,

} *Assumpsit in Houston Superior Court.*

To the Clerk of the *Superior Court*,

*Perry, Georgia.*

5th. The Packet must be sealed up with as many seals as there are Commissioners ; each Commissioner must write his name across one of the seals, or wafers, with which the Packet is sealed.

6th. The Packet may be forwarded by Mail ; if that course be taken, the Commissioners, or one of them, must deliver it to the Post-Master, who must make the following entry upon it: “Received, *Macon, Bibb County, Georgia*, from the hands of *Thomas P. Stubbs, Esq.*, one of the Commissioners, and to be forwarded by Mail, this *July 20, 1859.*”

JAMES A. NESBIT, P. M.

7th. The Post-Master at the place to which the Packet is directed, must present it in open Court.

8th. The Packet may be returned by a private person ; in this case, the person will have to swear, upon delivering the Packet in Court, “that he received it from the hands of the Commissioners, or one of them ; that it has remained, unopened and unaltered in his possession, ever since.” The same mode may be observed in Justices’ Courts.

9th. When the packet is presented in Court and received, the Attorney should move the Court, for leave to open it, upon the granting of which Motion, the Clerk should make the following entry, on the envelope:—“Received on the usual oath of *John Doe*, with leave to open, this *July 23, 1859.*”

WILLIAM H. MILLER, *Clerk.*

AN ACT supplementary to the Judiciary Act.—*Approved Nov. 26, 1802.*

331. The judges of the superior courts shall not, in any case whatever, withhold any grant, deed, or other document, from the jury, under which any party in a cause, may claim title, except such evidence of title as may be barred by the act of limitation. No Deed or Grant to be withheld from the Jury.

AN ACT to legalize and make valid two Manuscript Books of the old Records of the Executive Department.—*Approved Dec. 16, 1811.*

332. From and after the passing of this act, the two manuscript books A and B, in the executive department, containing the records of said department from the year 1777 to the year 1784, inclusive, that have been transcribed, in pursuance of a resolution of the tenth day of December last past, be and the same are hereby legalized and made valid, and shall, henceforth, become a part of the records of said department. Two Books, (A and B), of the Executive Dep’t, made valid.

AN ACT to legalize and make valid certain acts of Sheriffs and Clerks ; and to regulate the admission of Evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers.—*Approved Dec. 15, 1810.*



*Whereas*, considerable doubts have arisen in the Courts of this State, relative to the official returns of Sheriffs and Deputy-Sheriffs, whose Bonds and Oaths have not been entered on the Minutes of the Court before which such officers may have qualified. *And whereas*, doubts have also arisen in said Courts, as to the propriety of admitting Deeds to go as evidence before a Jury, which a Deputy-Clerk may have certified, as to the enrollment; for remedy whereof—

Official acts of Sheriff's made valid. 333. SEC. I. *Be it enacted*, That the official returns of all sheriffs and deputy-sheriffs, shall be and the same are hereby legalized and made valid, to all intents and purposes, as if made by a sheriff or deputy, who had been qualified according to law.

Acts of Deputy-Clerks made valid. 334. SEC. II. All deeds, mortgages, conveyances and other writings, enrolled by any deputy-clerk, in the proper court, and certified by him as such, the same shall be received and admitted as evidence, in any court of this State, in like manner as if the same had been recorded by the chief clerk.

Acts of Deputy-Secretary of State made valid, etc. 335. SEC. III. All grants, copy-grants, testimonials, or any other document or paper, whatsoever, heretofore issued out of the Secretary of State's office, purporting to be signed by a deputy-secretary of State, shall be held and taken as legal: *Provided*, the said paper shall be ascertained to be genuine: *Provided*, nothing contained in this act, shall be so construed as to admit any grant obtained on the south side of the Oconee and Appalachee rivers, previous to the late land lotteries, as evidence in any court within this State.

Indorsement may not be proven, etc. 336. SEC. IV. In all cases brought by any indorsee or indorsees, assignee or assignees, on any bill, bond or note, before any court of law and equity in this State, the assignment or indorsement, without regard to the form thereof, shall be sufficient evidence of the transfer thereof. And the said bond, bill or note, shall be admitted as evidence, without the necessity of proving the hand-writing of the assignor or assignors, indorser or indorsers. Any law, usage or custom, to the contrary notwithstanding.

AN ACT declaring certified copies of Official Bonds, Testimony in certain cases.—*Approved Dec. 20, 1823.*

Certified copies of Official Bonds, shall be evidence, unless denied on oath. 337. In all causes now pending, or which may hereafter be instituted, in any of the courts of law or equity in this State, against the principal and securities, or either of them, on any official bond, given by any executor, administrator or guardian, or any other public officer of this State, it shall be lawful for the said courts to receive as evidence of the fact of the due execution of such bond, a certified copy thereof, made by the proper officer where such bond is of file or recorded; which copy shall be sufficient testimony in the cause, unless the same shall be denied on oath.

AN ACT to amend an act entitled "an act to regulate the Admission of Evidence, in certain cases, in the several Courts of Law and Equity in this State; and to provide for the Recording of Conveyances of Personal Property."—*Approved Dec. 21, 1830.*

Attestations properly official are Evidence. 338. The certificate of any public officer, under his hand and seal of office, if one is attached thereto, either of this State or any county thereof, in relation to any matter or thing pertaining to their respective offices; or which, by presumption of law, properly pertains thereto, shall be admitted as evidence before any court of law or equity in this State: *Provided nevertheless*, that nothing in this act contained, shall be so construed as to prevent any court to require the production of the original, to which said certificate may appertain, or that it may be accounted for.

Original to be accounted for.



All laws and parts of laws, militating against this act, are hereby repealed.

AN ACT amendatory of an act assented to the 21st Dec., 1820, [1822,] authorizing the Certificates and acts of Notaries Public, to be received in Evidence, in certain cases.—*Approved Dec. 26, 1836.*

339. SEC. I. From and after the passage of this act, the certificates, protests and other acts of notaries public, under the hand and seal of such notary, in relation to the non-acceptance of any bill-of-exchange, draft or other order, made for the payment of money or other thing; and also, in relation to the non-payment of any bill-of-exchange, draft, order, bond or note, for the payment of money or other thing, shall be deemed and received by the several courts of law and equity in this State, as sufficient *prima facie* or presumptive evidence of the facts therein stated, without any other or further proof: *Provided always*, that nothing in this act shall prevent either party, plaintiff or defendant, from having the benefit of the testimony of such notary, should they deem it necessary: *And provided also*, that the party relying on such notarial act, shall at the first term, file in the court, either a copy or the original of such protest or other acts: *And provided further*, that whenever a plaintiff, relying upon such notarial act, shall fail to file the same, as is herein provided, the court may grant such further time as it shall deem to be reasonable, in which it must be filed, in order to be operative as evidence.—[*This act supersedes that of 1822.*]

Certificate, etc., of Notaries Public, made evidence.

Evidence of Notary may be had. Act of Notary must be filed. Failing to file, Court may give time.

SEC. II. [Repeals all conflicting acts.]

AN ACT to regulate the admission of Oral Evidence, in reference to Written Instruments in certain cases.—*Approved Dec. 25, 1837.*

*Whereas*, it is now the practice, in some of the Circuits of this State, to admit Oral Evidence to prove that Deeds and Bills of Sales, absolute upon their face, were intended as Mortgages or securities for the payment of money, or other thing only, without any charge of fraud in obtaining them. *And whereas*, such practice may lead to serious injuries to the rights of the good people of this State, over their property, and may present strong inducements to the commission of frauds and perjuries; for remedy whereof—

340. SEC. I. *Be it enacted*, That from and immediately after the passing of this act, oral evidence shall not be received in any courts in this State, to show that a deed or bill of sale, absolute upon its face, made after the passing of this act, was intended as a mortgage or security for the payment of money or other thing, unless there is a charge of fraud in obtaining the same, in which case, oral evidence, going to show the fraud only, may be received. Any law, usage, custom or practice, to the contrary notwithstanding.

Oral Evidence inadmissible to prove a Deed, a Mortgage, etc. But inadmissible to prove fraud.

SEC. II. All laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to declare the force and effect of certain Contracts and Instruments in Writing, therein specified.—*Approved Dec. 29, 1838.*

*Whereas*, a diversity of decisions have prevailed in the several courts of this State, in regard to the force and effect of certain Written Contracts and Instruments in Writing, hereafter mentioned; for remedy whereof, and for the purpose of securing uniformity of Decisions, hereafter to be made, in the several courts of law and equity in this State, respecting such Instruments.—

341. SEC. I. *Be it enacted*, That from and immediately after the passing of this act, whenever any written contract, or other instrument in writing, shall be produced in evidence, or for any other legal purpose whatever, before any court of law or equity in this State, during the progress of any bill or

A Scroll without reference, or reference without a Seal, shall



constitute a sealed instrument. suit whatever, pending in any of the said courts, and such written contracts or instrument in writing shall have a scroll, or other representation of a seal, annexed thereto, instead of a seal composed of a wafer or wax, or other tenacious substance; and also, whenever it shall be shown by words expressed in the body or conclusion of said written contract or other instrument in writing, that it was the intention of the party or parties subscribing the same, to become bound by or to execute a writing obligatory, or sealed instrument, though no scroll or seal has been annexed to said written contract or other instrument, shall be held, taken and construed by said courts, both at law and in equity, to have all the force, effect and dignity of writings obligatory, or instruments under seal: *Provided*, that the provisions of this act shall not extend to any instruments heretofore executed.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to be entitled an act to authorize the recovery, by law, of Open Accounts in favor of certain classes of persons therein named, upon the same proofs which is now allowed by the laws of this State, in favor of Tradesmen and Merchants.—*Approved Dec. 23, 1843.*

Physician, Blacksmith, etc. Books made evidence, as Merchants. 342. SEC. I. That from and after the passage of this act, physicians, blacksmiths, and all other persons in the practice of any regular craft, shall be allowed to sue for and recover judgment in the several courts of law in this State, on open accounts, in their favor, upon the production and proof of their books of account, in the same manner and on the same terms as is now authorized by existing laws, in cases where tradesmen and merchants are parties plaintiffs in said courts.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to admit Tax-Collectors' Deeds in Evidence, in certain cases therein named.—*Approved Dec. 23, 1840.*

Tax-Collector's Deed how admitted in Evidence. 343. SEC. I. That from and after the passage of this act, when any party to a suit in any of the courts of this State, shall desire to offer in evidence, in any suit, a tax-collector's deed, and shall make oath that the tax-collector who executed the same, is dead, or has removed to parts unknown, it shall be the duty of such court, to admit the said deed, as evidence of the facts therein set forth and contained, without further proof: *Provided*, the same has been duly recorded.

SEC. II. [Repealing section.]

#### ACTS OF CONGRESS.

Acts of the Legislature. Records and Judicial proceedings of other States, how proven. SEC. I. The acts of the Legislatures of the several States, shall be authenticated by having the seal of their respective States affixed thereto. The records and judicial proceedings of the Courts of any State, shall be proved or admitted in any other Court, within the United States, by the attestation of the Clerk, and the Seal of the Court annexed, if there be a Seal, together with a Certificate of the Judge, Chief-Justice, or presiding Magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every Court within the United States, as they have by law or usage, in the Courts of the State from whence the said records are or shall be taken.—*Act of May 26, 1790.*

*Clerk of the Inferior Court's Certificate.*

STATE OF GEORGIA, } I, *John H. King*, Clerk of the Inferior Court  
 Houston County. } of said County, do hereby certify, that the above  
 and foregoing contains a true and exact statement of the proceedings  
 in the case of *John Doe* against *Richard Roe*, in an action of *Assumpsit*,  
 in said Court, between the parties, as appears from the records of said  
 Court.

*Given under my hand and seal of office, this May 1, 1859.*

JOHN H. KING, *Clerk*, [L. S.]

*Justice of the Inferior Court's Certificate.*

STATE OF GEORGIA, } I, *John D. Winn*, one of the Justices of the  
 Houston County. } Inferior Court of said County, (which Court is a  
 Court of Record,) do hereby certify, that *John H. King*, whose name  
 appears to the foregoing Certificate, was at the time of making said  
 Certificate, Clerk of the said Inferior Court of said County, and by  
 law, entrusted with the Records pertaining to said Court. That his  
 Certificate is in due form of law, and that the signature, purporting  
 to be his, is genuine.

*Given under my official signature this May 1, 1859.*

JOHN D. WINN, J. I. C.

SEC. I. From and after the passage of this act, all Records and Ex-  
 emplifications of Office-Books, which are or may be kept in any public  
 Office of any State, (not appertaining to a Court,) shall be proved or ad-  
 mitted in any other Court or Office, in any other State, by the attestation  
 of the keeper of said Records or Books, and the seal of his Office there-  
 unto annexed, if there be a seal, together with a certificate of the presid-  
 ing Justice of the Court, of the County or District, as the case may be,  
 in which such Office is or may be kept, or of the Governor, the Secretary  
 of State, the Chancellor, or the Keeper of the Great Seal of the State,  
 that the said attestation is in due form, and by the proper officer. And  
 the said Certificate, if given by the presiding Justice of a Court, shall be  
 further authenticated by the Clerk or Prothonotary of said Court, who  
 shall certify, under his hand and seal of Office, that the said presiding  
 Justice is duly commissioned and qualified. Or if the said Certificate be  
 given by the Governor, the Secretary of State, the Chancellor, or Keeper  
 of the Great Seal, it shall be under the Great Seal of the State in which  
 the said Certificate is made. And the same Records and Exemplifications,  
 authenticated as aforesaid, shall have such faith and credit given to them,  
 in every Court and Office within the United States, as they may have by  
 law or usage, in the Courts or Offices of the State from whence the same  
 are or shall be taken.

Records and  
 Exemplifica-  
 tions of Office-  
 Books, how  
 proven.

SEC. II. [Extends the provisions of both acts to "the Territories and  
 Countries subject to the jurisdiction of the United States."]—*Act of*  
*March 27, 1804.*

*Clerk's Certificate.*

STATE OF GEORGIA, } I, *William H. Miller*, Clerk of the Superior  
 Houston County. } Court, (and by virtue of my Office, keeper of the  
*Conveyancing Records*, which *Records* do not appertain to a Court,) do



hereby Certify, that the foregoing *three sheets*, contain a full and true Exemplification, taken from the *Records*, relating [*here give a statement of the paper,*] as the same appears of entry in said *Records*, in my Office.

*Given under my hand and seal of Office, this May 1, 1859.*

[L. S.]

WILLIAM H. MILLER, *Clerk.*

### *Judge's Certificate.*

STATE OF GEORGIA, { I, *Henry G. Lamar*, one of the Judges of the  
*Bibb County.* } Superior Courts of said State, presiding in the  
 County of *Houston*, do hereby Certify, that *William H. Miller*, whose  
 name appears to the foregoing Certificate, was on the day and date  
 thereof, Clerk of the *Superior* Court and Keeper of the *Conveyancing*  
*Records* of said County of *Houston*, as he is represented to be in said  
 Certificate. That the said Certificate is in due form of law and by  
 the proper officer. And that the above signature, purporting to be  
 his, is genuine.

*Given under my hand and official signature, this May 1, 1859.*

HENRY G. LAMAR, J. S. C. M. C.

### *Testimonial by the Governor.*

#### STATE OF GEORGIA.

By his Excellency, *Joseph E. Brown*, Governor and Commander-in-Chief of the Army and Navy of said State.

*To all whom these presents shall come—Greeting:*

Know ye, that *Henry G. Lamar*, whose signature appears to his Certificate, on the Instrument of Writing hereunto annexed, was at the time of signing said Instrument, one of the *Judges* of the *Superior* Courts of said State, presiding in the *Superior* Courts of the *Macon* Circuit; and that his attestation is in due form of law; therefore, all due faith, credit and authority is and ought to be had and given to his Proceedings and Certificates, as such.

In witness whereof, I have hereunto set my hand and caused to be affixed the seal of the State, in *Milledgeville*, the *fifth* day of *May*, eighteen hundred and *fifty-nine*, and the eighty-third year of American Independence.

*By the Governor—*

JOSEPH E. BROWN.

[*Seal.*]

JAMES H. WATKINS, *Secretary of State.*

NOTE.—If the *Exemplification*, &c., sought to be had, relates to Records and Judicial proceedings, the Certificates of the Clerk and Judge, are sufficient without the Testimonial of the Governor; but if the *Exemplification*, &c., relates to Records and Exemplifications of Office-Books, which are or may be kept in any Public Office, of any State, *not appertaining to a Court*, then the Testimonial of the Governor, must be added. It is safest, perhaps, in all cases, to have the Testimonial of the Governor.

AN ACT to authorize the admission, in evidence, of Certified Copies from the Executive Department and other Offices connected therewith, to be used as Evidence in any Court of Law or Equity, in this State, &c.—  
*Approved March 1, 1856.*

Certified Copies from Executive Department or any of the offices connected therewith, that are im-

portant or necessary in any of the civil or criminal courts of this State, shall be conceded [*received*] in evidence, in lieu of the original, in any court of law or equity in this State. utive Department, Evidence.

SEC. II. [Repeals all conflicting laws.]

## VERDICT, JUDGMENT, APPEAL.

345. SEC. XXVI. In all cases where a verdict shall be rendered, the party in whose favor it may be, shall be allowed to enter and sign judgment thereon at any time within four days after the adjournment of the court, at the clerk's office, for the amount of such verdict and all legal costs recoverable thereon ; and no execution shall issue on any verdict until such judgment shall be entered, signed by the party or his attorney. And all the property of the party against whom such verdict shall be entered, shall be bound from the signing of the first judgment. [But where several judgments shall be of equal date, the first execution delivered to the sheriff shall be the first satisfied:] *Provided always*, that any party against whom such judgment shall be entered, may enter good and sufficient security, either in open court or in the clerk's office, within the time aforesaid, for the payment of the judgment and costs, within sixty days ; and if such party shall not pay the same agreeably thereto, execution may issue against such party and the security, without other proceeding thereon: *And provided also*, that in case either party shall be dissatisfied with the verdict of the jury, then and in all such cases, either party may, within four days after the adjournment of the court in which such verdict was obtained, enter an appeal in the clerk's office of such court, as matter of right, [*see* 349.] And if such verdict shall be obtained in the inferior court, it shall be the duty of the clerk thereof to transmit such appeal to the clerk of the superior court of the county in which such verdict shall be obtained, who shall enter the same on the appeal docket, which appeal shall be admitted and tried by a special jury. *Provided*, the person or persons so appealing shall, previous to obtaining such appeal, pay all costs which may have arisen on the former trial, and give security for the eventual condemnation money, except executors and administrators, who shall not be liable to give such security. But if, on hearing such appeal, it shall appear to the jury that the appeal was frivolous and intended for delay only, they shall assess damage to the party aggrieved by such delay, not exceeding twenty-five per centum on the principal sum which they shall find due. And such damages as shall be so assessed, shall be specially noted in the verdicts of such jurors ; and no person shall be allowed to withdraw an appeal after it shall be entered but by the consent of the parties. And in case of a jury committing a contempt, or breaking up before giving in their verdict, in any civil case, the court may declare the same a mis-trial, and shall fine each of the offending juror or jurors in a sum not exceeding one hundred dollars. And if any party, plaintiff or defendant, be hereafter non-suited or cast, by reason of the neglect or misconduct of the attorney who shall hereafter bring or be employed in such suit, in all cases the said attorney shall pay all costs that may accrue thereby, and the court shall immediately enter up judgment accordingly for the same. Verdict and Judgment.

346. SEC. XXVII. No confession of judgment shall hereafter be entered up, but in the county where the defendant or defendants may reside, or unless the cause hath been regularly sued out and docketed in the usual way, as in other cases; nor until such cause be called in order, by the court, for trial. Stay of Execution.

*Appeal allowed as matter of right.*

*Party appealing must pay Costs and give Security.*

*Damages for frivolous Appeal.*

*Mis-trial.*

*Liability of Attorney in certain cases for Costs.*

*Confessions of Judgment when and where to be made.*



Interest not to be allowed as damages. 347. SEC. XXVIII. No verdict shall be received, on any unliquidated demand, where the jury have increased their verdict on account of interest, nor shall interest be given on any open account, in the nature of damages.

AN ACT to cause all Appeals from the Courts of Ordinary of this State, to be tried and determined by a Special Jury of the County where the case may happen; touching the Probate of Wills and granting Letters of Administration, in which matters of fact are involved, instead of a Decision being had thereon by the Court only.—*Approved Dec. 19, 1823.*

*Whereas*, it has heretofore been the practice in some of the Judicial Circuits of this State, for the Judges of the Superior Courts to hear and determine Appeals from the Courts of Ordinary of this State, touching the Probate of Wills and granting Letters of Administration, in which matters of fact were involved. And it being the policy of this government to retain the trial by jury in all cases in which matters of fact are involved—

How Appeals from the Court of Ordinary are to be tried. 348. *Be it therefore enacted*, That from and immediately after the passing of this act, all appeals taken up from the decision of the several courts of ordinary of this State to the superior court, touching the probate of wills and granting letters of administration, in which matters of fact are involved, shall be tried and determined by a special jury of the county where the case may happen; in the same way and under the same regulations as other appeals. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to explain and amend the Judiciary Act of 1799, so far as concerns the granting of Appeals in certain cases.—*Approved Dec. 23, 1839.*

*Whereas*, a contrariety of opinion exists among the judges of this State, and a different practice prevails in the different judicial circuits thereof, touching the granting of appeals under certain circumstances; for remedy whereof—

One of several parties may Appeal. 349. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful, whenever there shall be more than one party, plaintiff or defendant, and one or more of said parties, plaintiff or defendant, desire to appeal, and the other or others, refuse or fail to appeal, it shall and may be lawful for any party, plaintiff or defendant, to enter his appeal, under such rules and regulations as are now provided by law.

Damages against Appellant only and his security. 350. SEC. II. Upon the appeal, either of the plaintiff or defendant, as aforesaid, the whole record shall be taken up, but in case damages shall or may be awarded upon such appeal, such damages shall only be recovered against the party or parties appealing and their securities, and not against the party or parties failing or refusing to appeal.

Securities' remedy against Appellant. 351. SEC. III. In case any such security or securities shall be compelled to pay off the debt or damages for which judgment may be entered, in any cause, he, she or they shall have recourse only against the party or parties for whom he, she or they, became security or securities.

SEC. IV. [Repealing section.]

AN ACT to authorize parties to enter an Appeal, in certain cases therein mentioned.—*Approved Dec. 27, 1843.*

Party dying, Representative may Appeal, in certain cases. 352. SEC. I. *Be it enacted*, That in all cases hereafter to be tried in any of the courts of this State, when either the plaintiff or defendant shall hereafter depart this life, after said cause has been tried, and before the time has expired which such party has allowed by law to enter an appeal, and no appeal shall have been entered, it shall be the right of the legal representatives of such party dying, to enter an appeal within four days from the time such executor or administrator shall have been qualified: *Pro-*

*vided, however, that in the construction of this act, no appeal may be entered in causes not the subject-matter of appeal.*

353. SEC. II. Whenever an appeal shall be entered under this act, it shall not be necessary to revive suit under *scire facias*; but suit shall be revived by the party giving notice to the adverse party within thirty days from the time of appeal. And whenever a defendant shall appeal, said cause shall stand for trial on the appeal-docket, at the first court after twelve months shall have expired after such executor or administrator shall have been qualified.

Notice must be given to the adverse party.

### *Notice by the Representative.*

JOHN DOE            )  
    *vs.*                )  
RICHARD ROE.        ) *Assumpsit* in *Houston Superior Court* and *Verdict* for the  
                          ) Plaintiff, at *April Term, 1859.*

The defendant having departed this life after *verdict* in the above cause and within the time allowed for appealing, without entering an appeal, the Plaintiff is hereby notified that the undersigned did enter an appeal in said case on the *twentieth* day of *April*, eighteen hundred and *fifty-nine*; (within four days after his qualification as *Executor*;) in conformity with the statute in such case made and provided. This *May 1, 1859.*

CHARLES SMITH, *Ex'r of R. R. dec.*

### *Stay Bond.*

JOHN DOE            )  
    *vs.*                )  
RICHARD ROE.        ) *Verdict* for the *Plaintiff* for *five hundred dollars* prin-  
                          ) cipal debt; *thirty dollars* interest, and *fifteen dollars*  
                          ) costs of suit.

The *Defendant* in the above-stated case comes forward and demands a Stay of Execution, according to the statute in such case made and provided, and brings *Charles Smith* and tenders him as his Security; and they, the said *Richard Roe* and *Charles Smith*, acknowledge themselves, jointly and severally, bound unto *John Doe*, the *Plaintiff*, for the payment of the said verdict and costs, in said cause.

In testimony whereof the said *Richard Roe* and *Charles Smith*, have hereunto set their hands and affixed their seals, this *May 1, 1859.*

Approved—

*William H. Miller, Clerk.*

RICHARD ROE, [L. S.]

CHARLES SMITH, [L. S.]

### *Appeal Bond.*

JOHN DOE            )  
    *vs.*                )  
RICHARD ROE,        ) *Verdict* for the *Plaintiff* for *five hundred dollars* prin-  
                          ) cipal debt; *thirty dollars* interest, and *fifteen dollars*  
                          ) costs of suit.

The *Defendant* being dissatisfied with the *Verdict* of the Jury rendered in the above cause, and having paid all costs, and demanded an Appeal, according to the statute in such case made and provided, brings *Charles Smith* and tenders him as his Security; and they, the said *Richard Roe* and *Charles Smith*, acknowledge themselves, jointly and severally, bound unto *John Doe*, the *Plaintiff*, for the payment of the eventual condemnation money in said cause, and all future costs.

In testimony whereof the said *Richard Roe* and *Charles Smith*, have hereunto set their hands and affixed their seals, this *May 1, 1859.*

Approved—

*William H. Miller, Clerk.*

RICHARD ROE, [L. S.]

CHARLES SMITH, [L. S.]



AN ACT to enable parties, Plaintiffs or Defendants, in any court of this State, to Appeal without paying costs and giving security, as now required by law, on certain conditions herein mentioned. And also to enable parties in Justice's Courts in this State, to obtain Certioraries without paying costs and giving security, on certain conditions herein mentioned.—*Approved Dec. 27, 1842.*

Appeal allowed where from poverty party cannot pay cost and give security.

354. SEC. I. *Be it enacted*, That from and after the passage of this act, when any party, plaintiff or defendant, in any suit at law or in equity, hereafter to be commenced, in any of the courts of this State, where the party cast shall be dissatisfied with the decision, and shall be unable to pay cost and give security, as now required by law; if such party will make and file an affidavit in writing, that he or she is advised and believes that he or she has a good cause of appeal, and that owing to his or her poverty, he or she is unable to pay the cost and give security, as now required by law in cases of an appeal, such party shall be permitted to appeal without the payment of cost, and without giving security, as heretofore practised in this State.

Certiorari allowed to certain persons without paying cost and giving security.

355. SEC. II. In all cases hereinafter determined in any of the justices, courts of this State, on the appeal, and the party cast shall be dissatisfied with the decision, if such party will make an affidavit in writing, that he or she is advised and believes that he or she has good cause for certioraring the same to the superior court, and that owing to his or her poverty, he or she is unable to pay the cost and give security as required by law, such affidavit shall in every respect, answer instead of the certificate of the presiding justice, that the cost has been paid and security given, as now required by law. And the judges of the superior courts respectively, shall grant writs of certiorari on the production of such affidavits, if sufficient cause be shown in the petition and affidavit. Any law, usage or custom, to the contrary notwithstanding.

### *Affidavit of the Party.*

#### GEORGIA—HOUSTON COUNTY.

JOHN DOE } *Assumpsit* in the *Superior Court*, and Verdict for the  
                   *vs.* }  
 RICHARD ROE. } *Plaintiff.*

The *Defendant* in the above-stated case being dissatisfied with the Verdict rendered by the Jury, desires an appeal, and being sworn, says, that he is advised and believes that he has good cause of Appeal, but that owing to his poverty, he is unable to pay the costs and give security, as required by law.

Sworn to and subscribed,  
 before me, this *May 1, 1859.* }  
*William H. Miller, Clerk.* }

RICHARD ROE.

AN ACT to define the liability of Securities on Appeal, on Stay of Execution, and for protection of Bail on Recognizance, Bond, Note or other Contract.—*Approved Dec. 20, 1826.*

Security on Stay and Appeal to have control of *fi. fa.*

356. In all cases where any person or persons hath heretofore entered himself as security on appeal, or for stay of execution, in any case in any court in this State, and may subsequently thereto have paid off and discharged the execution issuing in such case, it shall and may be lawful for such security to apply to the sheriff, clerk, constable, marshal or attorney to whom such payment may be made, and procure an entry or certificate to be made on such execution that the same was paid by the security, and

such security shall thereupon be entitled to the use and control of such execution for the purpose of proceeding against his principal.—[See 358.]

357. SEC. II. In all cases of appeal where security hath been given, and hereafter given, and hereafter to be tried, it shall and may be lawful for the plaintiff or his attorney, to enter up judgment against the principal and the security, jointly or severally, and execution shall issue accordingly, and proceed against either or both, at the option of the plaintiff, until he is satisfied: *Provided nevertheless*, if the execution against the security or securities be first paid by him or them, then the execution against the principal shall still be of force and under the control of the security or securities, until the same be satisfied by said principal.

How Judgment may be entered in Appeal cases, etc.

358. SEC. III. Where security shall have been given, or may hereafter be given for the stay of an execution after judgment, execution shall issue as in cases of appeal against the principal and security, jointly or severally, and proceed and be controlled in like manner.

Security on Stay of Execution to have control of *fi. fa.*

359. SEC. IV. When any person or persons hath heretofore or shall hereafter become bail on recognizance, or security on bond, note or other contract, and shall be sued thereon, it shall and may be lawful for such bail or security on the trial of such case, to make special defence. And in case it should appear to the court that one or more of the defendants, is or are securities only, and not interested in the consideration of the contract sued on, then and in such case, verdict and judgment shall be entered accordingly, and further proceedings had, and privileges exercised, as herein-before prescribed in behalf of the other securities: *Provided*, the plaintiff shall in no case be delayed by any dispute which may arise between the defendants, but the court shall decide the issues, and the verdict which may have been finally rendered on the issues between the defendants shall relate back to the time of the verdict and judgment in favor of the plaintiff.

Special defence may be made by securities.

Disputes between Defendants not to delay Plaintiff.

360. SEC. V. In all cases in which any person or persons hath heretofore become security in the manner herein-before specified, and judgment has been rendered against him or them, and execution has been issued accordingly, in which they may be able to show that he or they were security only, and as such hath or have paid off and discharged such execution, such security or securities shall have the benefit thereof, and power to control the same, for the purpose of indemnifying himself or themselves out of the property of the principal.

Rights of those who have heretofore become security.

361. SEC. VI. When any security to any note, bond or obligation, shall subscribe himself as security, such statement appended to his name on the said note, bond or obligation, shall be held and taken as good evidence of his being security, and the plaintiff shall sue out original and mesne process against him accordingly.—[See 364.]

Proof of being security, how Judgment, etc., to be entered up.

### *Special Defence by Security.*

And now at this term comes *Charles Smith*, by his attorney, *James A. Pringle*, and for matter of Special Defence, says that he signed the *Note*, the subject-matter of the Plaintiff's demand as security only, although he omitted to insert the word security to his name at the time of signing said *Note*. And said Defendant avers that he is no way, (nor was he at the time of signing said *Note*,) interested in the consideration thereof. Wherefore, Defendant prays that the Judgment and Execution rendered in said case, may recognize him as Security. And this Defendant is ready to verify, etc. This May 1, 1859.

JAMES A. PRINGLE, *Att'y pro Charles Smith*.



AN ACT to define the liability of Endorsers of Promissory Notes and other Instruments, and to place them upon the same footing with Securities.—  
*Approved Dec. 26, 1826.*

Endorsers put  
on the same  
footing of Se-  
curities; no-  
tices to En-  
dorsers unnec-  
essary.

362. From and after the passage of this act, that the practice heretofore required of making a demand of the makers of promissory notes and other instruments, for the payment and performance of the same, and their giving notice of such demand within a reasonable time to the endorsers of said promissory notes and other instruments, shall cease and become entirely unnecessary to bind said endorsers. And whenever any person whatever endorses a promissory note or other instrument, he shall be held, taken and considered as security to the same, and be in all respects, bound as security, until said promissory note or other instrument, is paid off and discharged; and shall be liable to be sued in the same manner and in the same action with the principal or maker of said promissory notes or other instruments. Any law, practice or usage to the contrary notwithstanding: *Provided always*, that nothing herein contained shall extend to any promissory notes which shall be given for the purpose of negotiation, or intended to be negotiated at any chartered bank, or which may be deposited in any chartered bank for collection: *And provided also*, that nothing contained in this act shall be construed as to prevent the endorser from defining his liability in the endorsement.

Bank Notes  
excepted.

Security may  
require col-  
lection.

363. SEC. II. Any security or endorser may, whenever he thinks proper, after the note or instrument becomes due, require the holder to proceed to collect the same; and if he should not proceed to do so within three months, the endorser or security shall be no longer liable.—[*See 366.*]

AN ACT to alter and amend an act, entitled an act “to define the liability of Securities on Appeal, on Stay of Execution, and for the protection of Bail on Recognizance, Bond, Note, or other contract.—*Approved Dec. 26, 1831.*

*Whereas*, doubts exist whether the security or securities, against whom judgment has been rendered and execution has issued accordingly, upon any contract, bond or note, since the passage of the above-recited act, can have legally, the control of the execution, where the same has been paid off by such security or securities, (and they have neglected to make special defence at the trial,) to indemnify themselves out of the property of the principal; for remedy whereof—

Security pay-  
ing off *fi. fa.*  
may have the  
control of it,  
etc.

364. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for any person or persons who have heretofore become security on any note, bond or other contract, and not interested in the consideration thereof, and judgment has been rendered against them, and execution issued accordingly; and such security or securities have been heretofore compelled to pay off such judgment or execution, he, she or they shall be entitled to the control of the same, for the purpose of remunerating him, her or them out of the property of the principal or principals: *Provided always*, that it shall be made satisfactorily appear to the court from whence the execution issued, that such person or persons assuming to have the control of any judgment or execution as aforesaid, were *bonâ fide* security or securities only, upon the original bond, note or contract which was the foundation of the judgment and execution.

What Security  
must prove.

Where no  
Special De-  
fence has been  
made.

365. Where any security or securities as aforesaid, shall fail at the trial of the note, bond or other instrument, upon which he, she or they were security or securities, to make special defence thereof, it shall be lawful for such security or securities to take control after payment thereof, of the said *fi. fa.* after complying with the requisitions of the first section of this act. And that all laws and parts of laws, militating against this act, be and the same are hereby repealed.



AN ACT declaring and making certain the law defining the liability of Endorsers and Securities to Promissory Notes and other Instruments, when the holder thereof shall fail to proceed to collect the same after notice.—*Approved Dec. 26, 1831.*

*Whereas*, the legislature of this State, did on the twenty-sixth of December, 1826, pass an act, entitled “an act to define the liability of endorsers of promissory notes and other instruments, and to place them upon the same footing with securities;” by the second section of which act, it is provided, that “any security or endorser may, whenever he thinks proper, after the note or instrument becomes due, require the holder to proceed to collect the same; and if he should not proceed to do so within three months, the endorser or security shall be no longer liable.” *And whereas*, the constitutionality of said second section is doubted, by reason of its departure from the title of said bill; for remedy whereof—

366. *Be it enacted*, That in every case which may hereafter arise, where the security or endorser of any promissory note or other instrument, after the same has or shall become due, has required or shall hereafter require the holder thereof to proceed to collect the same, and the said holder has not proceeded, or shall not proceed, to do so, within three months after such notice or requisition, the endorser or security shall be no longer liable.

Holder of Note, etc., must sue within three months after notice or Security discharged.

AN ACT to provide a remedy for Endorsers against all prior Endorsers and the Makers of Promissory Notes and other Contracts, in certain cases therein mentioned.—*Approved Dec. 21, 1839.*

367. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall and may be lawful for all persons who shall hereafter become endorsers on any promissory note, bond or other contract, made in the face thereof payable at any chartered bank, or which shall be negotiated at any chartered bank, or deposited there for collection. And where said endorsers are not interested in the consideration thereof, and judgment has been rendered against them, and execution has been issued thereon accordingly; and where such endorser or endorsers, shall hereafter be compelled to pay off such judgments or executions, he, she or they shall be entitled to the full control of each and every judgment or execution that shall or may be founded upon the same instrument, as against the makers thereof and all prior endorsers thereon, for the purpose of reimbursing and remunerating him, her or themselves, out of the property of said maker and endorsers: *Provided*, the person applying for such control shall make it appear to the court from whence the execution is issued, that he was only endorser thereon, and not interested in the consideration of said contract, and that he has *bonâ fide* paid off and discharged the judgment or execution that has been rendered or issued against him, and all costs on the other judgments.

Endorser of Bank Note paying it off to have control against Maker and prior Endorsers.

If he be not interested in the consideration of said Note, etc.

SEC. II. [Repealing section.]

AN ACT to prescribe the mode of signing Judgment and issuing Execution against Endorsers in certain cases.—*Approved Dec. 27, 1845.*

368. SEC. I. *Be it enacted*, That from and after the passage of this act, in all cases where one or more persons are endorsers upon any bill-of-exchange, promissory note or other instrument in writing, and separate suits may be prosecuted against such endorsers, in any court of this State, it shall be the duty of the plaintiff or his attorney in signing judgment in such suits against such endorsers, to designate and identify the contract in which such judgment is rendered, and that execution shall issue accordingly.

Judgment against Endorser, to specify contract.

Execution to follow Judgment.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.



*Judgment.*

Whereupon, it is ordered, considered and adjudged by the Court here, that the Plaintiff do recover of and from the Defendant, the *first* Endorser on a *Promissory Note*, made and executed by *Charles Smith* to *Robert West*, on the *first* day of *May*, eighteen hundred and *fifty-seven*, for the sum of *five hundred dollars*, and due *ten* days after date, the sum of *five hundred dollars* for his principal debt, etc.

AN ACT to point out a regular and definite Rule for the priority of Judgments obtained in the several Courts of this State.—*Approved Dec. 13, 1810.*

Judgments of  
the several  
Courts of  
equal dignity.  
All the prop-  
erty of the  
Defendant  
bound.

369. SEC. I. From and after the passing of this act, all judgments obtained in the superior, inferior or justices' courts of this State, shall be entitled to the right or claim of any money received by the sheriffs, coroners or constables, agreeably to the date of such judgment or judgments. And that all the property belonging to the defendant or defendants, shall be bound and subject to the discharge of the first judgment or judgments, obtained in either of the aforesaid courts; [see 371:] *Provided*, the demand of such right is made before any of the aforesaid officers have paid the money over to the plaintiff in interest. Any law, usage or custom to the contrary notwithstanding.

*Notice to Officers.*

STATE OF GEORGIA, {  
Houston County. { *To Madison Marshall, Sheriff of said County.*

You are hereby notified that I claim and demand so much of the money in your hands, arising from the Sale of the property of *John Doe* as will satisfy a *fi. fa.* in my favor against said *John Doe*, from the *Justices'* Court of the (619th) *District G. M.* of said County, herewith handed to you. This *May 1, 1859.*

RICHARD ROE, *Pl'ff in Fi. Fa.*

AN ACT explanatory of the several Judiciary Laws of this State.—*Approved Dec. 7, 1812.*

370. No part of the judiciary laws of this State shall be so construed as to require the renewal of any judgment as heretofore practised, or in any other manner whatever.—[See 373.]

AN ACT to amend the 26th section of the Judiciary Act, passed 16th day of December, 1799. And also to prevent a fraudulent enforcement of Dormant Judgments.—*Approved Dec. 19, 1822.*

A contrariety of decisions having taken place in the different circuits of this State, as to the time when the property of the party against whom a judgment is entered shall be bound. And dormant judgments, by being collusively kept open, or made the instruments of fraud on innocent purchasers, and often operate oppressively on vigilant and *bonâ fide* creditors—

How property  
of Defendant  
bound, on  
judgments.

371. *Be it enacted*, That from and after the passing of this act, all property of the party against whom a verdict shall be entered and a judgment signed thereon, in conformity to the provisions of the twenty-sixth section of said act of 1799, shall be bound from the signing of the first judgment, in cases where no appeal is entered; but in cases where an appeal is entered, from the first verdict. The property of the party against whom the verdict is rendered shall [not] be bound except from the signing of the judgment on the appeal, except so far as to prevent the alienation by the party of his, her

How property  
bound upon  
Appeal.

or their property between the signing of the first judgment and the signing of the judgment on the appeal.

372. SEC. II. All judgments signed on verdicts rendered at the same term Judgments to of the court, be considered, held and taken to be of equal date. And no be considered execution founded on said judgments, obtained at the same term, as aforesaid, of equal date. shall be entitled to any preference, by reason of being first placed in the hands of the officer.

AN ACT to be entitled an act to amend the third section of an act passed 19th day of December, 1822, entitled "an act to amend the twenty-sixth section of the Judiciary Act, passed the 16th day of December, 1799." And also, to prevent a fraudulent enforcement of Dormant Judgments.—*Approved Dec. 22, 1823.*

373. All judgments that have been obtained since the said 19th day of December, 1822; and all judgments that may be hereafter rendered in any of the courts of this State, on which no execution shall be sued out; or which executions, if sued out, no return shall be made by the proper officer for executing and returning the same, within seven years from the date of the judgment, shall be void and of no effect.—[*See 8th sec. stat. Lim.*]

374. SEC. II. When any judgment or execution has been declared void and of no effect by the construction given by any of the courts to the said third section of said act, the said judgment and execution so declared void and of no effect, shall and is hereby declared to be in as full force and effect as though the said act had not been passed.

SEC. III. The said third section of the act passed on the said 19th day of December, 1822, is hereby repealed.

AN ACT to authorize the assignment and transfer of judgments and executions. And to make certain and uniform the practice with regard to the same.—*Approved Dec. 22, 1829.*

375. From and after the passage of this act, it shall and may be lawful for the plaintiff in any judgment or execution, to sell or transfer the same by written assignment or control; and said sale or assignment shall not be considered a discharge or satisfaction of said execution, but the assignee may proceed to collect the same for his own use and benefit, in as full and ample a manner as the plaintiff could have done if no such transfer or assignment had been made.

376. SEC. II. Nothing in this act contained shall be construed as to authorize the collection of any execution which may have been paid off by the defendant or his agent, and kept open for the purpose of defrauding other creditors.

### *Transfer of Execution.*

For value received, I hereby transfer and assign to *Charles Smith*, this writ of *Feri Facias* against *Richard Roe*, and the judgment upon which it is founded, *without recourse on me*; this *May 1, 1859.*

JOHN DOE, *Plaintiff.*

AN ACT to prevent personal property, which is the subject of an action of Trespass or Trover, from vesting in the Defendant or Defendants to such action, by virtue of a recovery and judgment by the Plaintiff, except so far as to be subject to be sold under the execution which shall or may issue upon such judgment of the said plaintiff, obtained by him in the said action of Trespass or Trover. And to make such property first liable to the payment of the Damages recovered in said action.—*Approved Nov. 25, 1830.*



How far a verdict in Trespass or Trover, changes the property.

377. From and immediately after the passing of this act, when a verdict for damages shall be found or rendered, in favor of a plaintiff in trover or trespass, and a judgment shall be signed thereon, the said verdict and judgment shall not have the effect to change the property which is the subject-matter of the said suit or action, or to vest the same, or any part thereof, in the defendant or defendants to the said suit or action of trespass or trover, until after the damages and costs recovered by the plaintiff in such action, are paid off and discharged, except so far as to subject the said property to be sold under and by virtue of an execution issuing on said judgment in said action of trespass or trover, and to make the same liable to the payment of the damages and cost recovered in said action.

Former Judgment no lien, etc.

378. SEC. II. No judgment obtained against the said defendant to such suit or action of trespass or trover, prior in point of time to the said judgment so obtained by the said plaintiff in such action of trespass or trover, shall have any lien or binding force on said property which is the subject-matter of such action of trespass or trover, until after the damages and costs recovered by such verdict and judgment of the plaintiff in such action of trespass or trover, are first paid off and discharged.

SEC. III. All laws and parts of laws which militate against this act, are hereby repealed.

AN ACT directory of the mode of entering up Judgment on Official or Voluntary Bonds.—*Approved Dec. 30, 1847.*

Judgment for amount of Verdict.

379. SEC. I. *Be it enacted*, That from henceforth all judgments rendered against the obligor or obligors of any bond, whether official or voluntary bonds, shall be for the amount of damnification found by the verdict of the jury, and not for the penalty thereof, as has been decided in some of the courts of this State.

Successive Judgments may be had until the penalty is exhausted.

380. SEC. II. Until the penalty of said official or voluntary bonds has been exhausted by previous recoveries and satisfaction thereof, no person aggrieved or injured by the conduct of any one of the obligors, shall be prohibited from suing said [bond] or bonds; nor shall any previous recovery thereon be held as a bar to such subsequent suit, until the person pleading it shall prove that recoveries have been had to the extent of the penalty of such bond: *Provided*, nothing herein contained shall be construed to affect any cause heretofore decided.

AN ACT to perfect service of *Scire Facias* on absent Defendants by publication, for the purpose of reviving Dormant Judgments.—*Approved Feb. 8, 1850.*

Dormant Judgm't how revived ag't non-resident Defendant.

381. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any judgment obtained in any of the courts of this State, is or shall become dormant, and the defendant or defendants do or shall reside without the jurisdictional limits of this State, that said judgment may be revived against said absent defendant or defendants, by such process as is usual in case the defendant or defendants reside within the State: *Provided always*, that the defendant or defendants be served with a *scire facias* by publication in some public gazette of this State, once a month for four months, previous to the term of the court at which it is intended to revive said judgment; which service by publication, shall be as effectual in all cases, as if the defendant or defendants had been personally served.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to limit the lien of Judgments, rendered in any of the Courts of this State.—*Approved Jan. 22, 1852.*

382. SEC. I. *Be it enacted*, That from and after the passing of this act, no judgment rendered in any of the courts of this State, shall be enforced by the sale of any property, real or personal, which the defendant has sold and conveyed to a purchaser for a valuable consideration and without actual notice of such judgment: *Provided*, such purchaser, or those claiming under him, by such sale and conveyance, have been in peaceable possession of such real estate for four years, and of such personal property for two years before the levy shall have been made thereon.—[*And see 29th sec. Stat. Lim.*]

Property *bonâ fide* conveyed before Judgment, not subject to be levied upon and sold.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

*Judgment against an Executor or Administrator where the plea of plene administravit is sustained.*

Whereupon, it is considered by the Court here, that the plaintiff recover against the defendant, the sum of *one hundred dollars* for his principal debt; the sum of *twenty dollars* for his interest up to this date, and the sum of *fifteen dollars* for his costs and charges, in this behalf laid out and expended; to be levied of the goods and chattels, lands and tenements of the *Testator* (or Intestate), which shall hereafter come to the hands of the defendant to be administered; and the defendant in mercy, &c. Judgment signed this *May 1, 1859.*

*Judgment Quando Acciderint.*

Whereupon, it is considered by the Court here, that the plaintiff recover against the defendant, the sum of *one hundred dollars* for his principal debt, the sum of *twenty dollars* for his interest up to this date, and the sum of *fifteen dollars* for his costs and charges, in this behalf laid out and expended; to be levied as to the sum of *fifty dollars*, of the goods and chattels, lands and tenements of the *Testator* (or Intestate) now in the hands of the defendant, to be administered, and as to the balance, to be levied off the goods and chattels, lands and tenements of the *Testator* (or Intestate) which shall hereafter come to the hands of the defendant to be administered; and the defendant in mercy, &c. Judgment signed this *May, 1859.*

BAIL.

383. SEC. XIII. In all cases where bail is requirable, and the plaintiff in any action shall require bail, such plaintiff shall make affidavit before any judge, justice of the inferior court, or justice of the peace within this State, (or any judge or justice of a superior court of any one of the United States, shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the governor, certifying that the person taking such affidavit is one of the judges or justices of a superior court of that State,) of the amount claimed by him; and that he has reason to apprehend the loss of the said sum, or some part thereof, if the defendant or defendants is or are not held to bail. Which affidavit shall be filed in the clerk's office, and copies thereof affixed to the

Pl'ff must make Oath of the amount claimed, etc.

Subject matter of Affidavit.



original petition and process, and to the copy or copies thereof. And the Am't to be en-amount sworn to shall be endorsed on the petition and process.  
dorsed.

384. SEC. XIV. When any civil process shall issue out of any of the said Sheriff's duty. courts, whereby bail shall be required to be taken in manner aforesaid, of any person or persons, to answer any action in any of the said courts, the sheriff or other officer shall take a bond with one or more sufficient security or securities, for double the sum sworn to, and shall return such bond, with the petition and process. And in case the sheriff, or other officer, shall fail or Sheriff made neglect to take such bail, or the bail taken shall be deemed insufficient by the Special Bail court, on exceptions taken thereto and entry thereof made, at the first term in certain in cases. to which the said petition and process shall be returned, such sheriff or other officer and his or their security, or securities, in either of the said cases, shall be deemed and stand as a special bail; and the plaintiff may proceed to judgment according to the provisions of the act herein-after mentioned. And in all cases Defendant to where any defendant or defendants, of whom bail shall be required, shall refuse be committed to give good and sufficient bail, it shall be the duty of such sheriff or other officer when he refu- to commit such defendant or defendants to the common jail of the county; or ses to give Bail. if there should be no jail in the county, or the same shall be insufficient, it shall and may be lawful for the said sheriff or other officer to confine such defendant or defendants in some private house. *Nevertheless*, such person or persons shall be allowed all the benefits of appearance and defence, as if he, she or they Defence allowed. were personally present; and shall not be discharged out of custody but by putting in bail, or by order of court.

385. SEC. XV. All bail taken according to the directions of this act shall be deemed, held and taken, as special bail, and as such be liable to the re-covery of the plaintiff. But the plaintiff, after final judgment, shall not take All Bail special. out execution against such bail, until a *capias ad satisfaciendum* shall be first Ca. sa. must be issued against De- issued thereon, and the principal cannot be found. And shall also issue a fendant. *scire facias*, returnable to the said court, which shall be served on the bail, Sci. fa. against Bail. at least twenty days before the return thereof. And after the return of such *capias ad satisfaciendum* against the principal, and *scire facias* against the bail, and judgment thereon, execution may issue against the principal and bail, or either of them, or either of their estates, unless the bail shall surrender the principal at, or before, entering up final judgment on the *scire facias*, either in open court, in term-time, or to the sheriff of the county in which such principal shall reside, at any time in vacation. And it shall be the duty of the court to order such principal into the custody of the sheriff; and the duty of the sheriff, in time of vacation, to receive into his custody such principal, and in either case, to commit him, her or them to jail according to the direc-tions of this act. Any law, usage or custom, to the contrary notwithstanding.

### *Affidavit requiring Bail.*

STATE OF GEORGIA, } In person appeared before the undersigned, *John*  
Houston County. } *Doe*, who after being sworn according to law, says,  
that *Richard Roe*, of said county, is justly indebted to him, the sum of  
*five hundred dollars besides interest*, (by *Promissory Note* past due.) And  
that he, deponent, has reason to apprehend the loss of the said sum,  
or some part thereof, if the said *Richard Roe* be not held to bail.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }

*James Mack, J. P.* }

JOHN DOE.

NOTE.—The Agent or Attorney may make the affidavit to hold to Bail. Bail may be re-quired *pendente lite*. Bail may also, be required where the debt is not due. And on he Sabbath day.

*Endorsement on the Petition and Process.*

Sheriff, take good Bail in the sum of *one thousand dollars*.

JAMES A. PRINGLE, *Pl'ff's Att'y*.

*Bail Bond.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *Charles Smith*  
*Houston County*. } as security, hereby acknowledge ourselves held  
 and bound to *John Doe*, and his assigns, in the sum of *one thousand*  
*dollars*—subject to the following conditions—

The conditions of the above obligation are these: whereas, a civil suit, (*Assumpsit*,) requiring Bail, at the instance of *John Doe* against *Richard Roe*, returnable to the *Superior Court* to be held in and for said County, on the *fourth Monday in October next*, for the sum of *five hundred dollars*, hath been served on said *Richard Roe*, by the Sheriff of said County: now, should the said *Richard Roe*, in case he be cast in said suit, well and truly pay and satisfy the condemnation of the Court, or render his body to prison in execution of the same, in terms of the law in such case made and provided; and upon failure thereof, the said *Charles Smith* will pay the debt and costs for him, then the above obligation to be void, otherwise, of force. This *May 1, 1857*.

Approved—

*James Mack, J. P.*

RICHARD ROE, *Prin.* [L. S.]

CHARLES SMITH, *Sec'ty.* [L. S.]

*Exceptions to the Bail Bond.*

At the return term of said action, comes *James A. Pringle*, Plaintiff's Attorney, and says that the Bail taken in said case is insufficient in this, to wit, [*here set out distinctly the objections to the Bail.*] Wherefore, Plaintiff prays, that *Madison Marshall*, Sheriff of said County, and his securities, be deemed and stand as Special Bail, in said action.

*Capias ad satisfaciendum.*

STATE OF GEORGIA, } To all and singular the Sheriffs of said State.  
*Houston County*. } We command you, that you take the body of  
*Richard Roe*, if to be found in your County, and him safely keep so  
 that you have his body before the *Superior Court* to be held in and for  
 said County, on the *fourth Monday in April next*, at the Court-house in  
*Perry*, then and there to satisfy *John Doe* the sum of *five hundred dol-*  
*lars*, for his principal debt, the sum of *forty-five dollars* for his interest,  
 and the sum of *fifteen dollars* for his costs, which lately in our said  
 Court said *John Doe* recovered against him said *Richard Roe*, by reason  
 of the non-performance of certain promises by the said *Richard Roe*  
 heretofore made, whereof the said *Richard Roe* is convicted and liable  
 as appears of record, besides your fees for this service. Herein fail  
 not, and have you then and there this writ.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this *Octo-*  
*ber 24, 1859*.

WILLIAM H. MILLER, *Clerk*.

*Return by the Sheriff on the back of the Writ.*

The Defendant not to be found in this County. This *October 30, 1859*.

MADISON MARSHALL, *Sheriff*.



*Scire Facias against Bail.*

STATE OF GEORGIA, }  
 Houston County. } *To the Sheriff of said County—Greeting.*

Whereas, at the *April* Term of the *Superior* Court of said County, eighteen hundred and *fifty-nine*, *John Doe* commenced his action of *Assumpsit* against *Richard Roe*, and at the commencement of said action, said *John Doe* filed his affidavit requiring Bail. And whereas, *Charles Smith*, of said County became the Bail of said *Richard Roe* by entering into Bond under his hand and seal, with said *Richard Roe*; which Bond bears date the *first day of May* eighteen hundred and *fifty-seven*, and is for the sum of *one thousand dollars*, with the following conditions—*[here set out the conditions of the Bond verbatim;]* which Bond is here in Court to be shown. And whereas, at the *April* Term of said Court, eighteen hundred and *fifty-eight*, a *verdict* was rendered in said action of *Assumpsit*, in favor of the Plaintiff against the Defendant, for the sum of *five hundred dollars*, besides interest and costs, upon which *verdict* judgment was entered up. And whereas, the Defendant having failed to satisfy the condemnation of the Court a writ of *Capias ad Satisfaciendum* was issued against him, upon which writ *Madison Marshall*, Sheriff of said County, has made the return of “the Defendant not to be found in this County.” You are therefore, hereby required to make known to the said *Richard Roe* and *Charles Smith*, that they be and appear at the next *Superior* Court to be held in and for said County, on the *fourth Monday in October next*, then and there to show cause, if any they can, why judgment should not be rendered against them on said Bond, in favor of the Plaintiff, according to the statute, in such case, made and provided.

*Witness, the honorable Henry G. Lamar, Judge of said Court,*  
*this August 4, 1859.* WILLIAM H. MILLER, *Clerk.*

*Surrender of Principal by Security to the Sheriff.*

STATE OF GEORGIA, } I hereby acknowledge that I have received of  
 Houston County. } *Charles Smith* the body of *Richard Roe*, for whom  
 he is Bail in an action of *Assumpsit* pending in *Houston Superior* Court;  
 in which case *John Doe* is Plaintiff and said *Richard Roe* Defendant.  
 The surrender of the Defendant is in discharge of the Bail Bond entered  
 into by said *Charles Smith* with said *Richard Roe*, in said case. This  
*June 1, 1859.* MADISON MARSHALL, *Sheriff.*

NOTE.—The surrender of the Principal to the Sheriff by the Security, (in vacation,) authorizes the Security to move the Court in term-time, that an Exoneretur may be entered on the Minutes. If the surrender be made to the Court, the Exoneretur should be moved and entered on the Minutes at the time of the surrender.

*Exoneretur.*

JOHN DOE }  
 vs. }  
 RICHARD ROE. } *Assumpsit and Bail.*

On reading and filing the acknowledgment of the Sheriff, of the sur-

render to him, in vacation, of the Defendant, by his Security *Charles Smith*, in discharge of his obligation—it is ordered, that said Security be exonerated and discharged from his liability as Bail, and that an Exoneretur be entered on the Bail Bond in said case.

*Or thus.*—The Defendant in this cause having been surrendered into the custody of the Sheriff, in vacation, (or here in Court, as the case may be,) by his Bail—it is ordered, etc.

AN ACT to extend the powers of Sheriffs and Constables in certain cases.

—*Approved Dec. 19, 1818.*

386. SEC. I. It shall be lawful for sheriffs in all cases where a bail or criminal process is placed in their hands, and the person against whom it may be, is moving about from one county to another, for the said sheriff, or his deputy, to follow the said person or persons, into any county in this State, and serve the said process. Sheriff may follow itinerant person anywhere in the State.

387. SEC. II. It shall be lawful for any constable, and he is hereby required, in all cases where a bail or criminal process is placed in his hands, and the person against whom the same may be, is moving about from one district to another, to serve the said process in any district within the county, in which he may be constable. Constable may follow itinerant person anywhere in the county.

AN ACT to amend the Judiciary Law of this State, passed the 16th day of February, in the year 1799; so far as to authorize the issuing of Bail Process in certain cases.—*Approved Nov. 8, 1820.*

*Whereas*, great inconvenience has resulted for the want of a law authorizing plaintiffs, pending actions, to hold the defendant to bail; for remedy whereof—

388. *Be it enacted*, That in cases where an action is commenced and pending; or where an action may hereafter be commenced, and no bail shall have been required at the commencement of said action; or having been required, and has or may be discharged, and the plaintiff in any such action, pending the same, shall require bail, such plaintiff shall make affidavit before any judge, justice of the inferior court, or justice of the peace, within this State, (or any judge or justice of a superior court of any one of the United States; shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the governor, certifying that the person taking such affidavit, is one of the judges or justices of a superior court of that State;) of the amount claimed by him, and that he has reason to apprehend the loss of the said sum, or some part thereof, if the defendant or defendants, is or are not held to bail; which affidavit shall be filed in the clerk's office of the court in which such action is pending, and a copy or copies thereof affixed to the process to be issued by the clerk of said court, in which such suit may be pending, and to the copy or copies of such process. And the amount sworn to shall be endorsed on such process and the copy or copies thereof. Bail may be required *pendente lite*.

389. SEC. II. When any such affidavit is made and filed in the clerk's office of the court in which such suit is or may be pending, the clerk thereof shall immediately issue a process in the case, with as many copies as there are defendants, annexing a copy of said affidavit to each process and copy process; and which process shall be made returnable to the next term of said court, after the issuing of the same, and shall be executed and returned into court by the sheriff, his deputy, or other proper officer; and when so executed and returned, shall be taken and considered a part of the record, in said case. Clerk's duty.  
Clerk must annex Process.  
Sheriff must serve Process.



- When Sheriff must execute Process. 390. SEC. III. When the said process and copy affidavit and copy process shall issue as aforesaid, they shall be delivered to the sheriff, or other proper officer, who shall be bound to execute the same at any time before the sitting of the court to which the said process may be made returnable, under the same directions and provisions as are pointed out in and by the said judiciary act, passed in the year 1799.
- How Def't dealt with. 391. SEC. IV. All and every defendant or defendants, when arrested by virtue of said process, shall be dealt with by the officer arresting him, her or them, in the same manner as would have been done had such defendant or defendants been arrested at the commencement of said action, on bail process; and shall be discharged from said arrest in no other manner than he, she or they, could in case such arrest had been made on bail process at the commencement of said suit. And all bail taken according to the directions, and under the provisions of this act, shall be held bound and liable in the same manner he, she or they, would have been bound and liable, had he, she or they, become bail at the time of the commencement of said action. And the plaintiff or plaintiffs in said action, shall be and they are hereby authorized to proceed in the same manner against the defendant or defendants and bail, or either of them, as is pointed out in and by the said judiciary act passed in the year 1799.
- Bail bound as if required at the commencement of the action.
- No delay allowed. 392. SEC. V. The defendant or defendants so held to bail, in manner heretofore pointed out in this act, shall not, by reason thereof, be entitled to any delay or continuance, but the case shall proceed to trial as though bail had been required and taken at the commencement of the case. And when there are more defendants than one, in such suit, some of whom reside out of the county in which such suit is pending, a second original process, and copy or copies may issue, returnable to the court in the county in which such suit or action is or may be pending, which when served by the sheriff of the county where such defendant or defendants reside, or by other proper officer, the said defendant or defendants shall be subject and liable to the same provisions and restrictions as he, she or they, would have been had the bail process issued at the commencement of said case.
- Non-resident Defend't how served.
- His liability.

### *Bail Pendente Lite.*

[For the formal parts of this affidavit, see "Affidavit requiring Bail,"] then add, "That at the commencement of said action deponent did not require Bail; (or the Bail required at the commencement of said action, having been discharged, as the case may be.) And that he deponent, has reason," etc.

AN ACT requiring Sheriffs and Constables in any of the Counties in this State not having Jails, to convey to the Jail of an adjoining County, persons by them arrested on a Writ of *Capias ad Satisfaciendum*, or any legal Process requiring Bail. And to require the Jailers of such Counties, on good and sufficient security being given for the Jail-fees, to receive and safely keep such prisoners.—*Approved Dec. 13, 1820.*

- Arresting Officer may convey Defend-ant to the Jail of an adjoining county. 393. The sheriffs and lawful constables in any of the counties of this State that are not provided with a jail, be and they are hereby authorized and required, to convey persons arrested by them, by virtue of a *capias ad satisfaciendum*, or other civil process which may require bail, to the jail of any adjoining county; and to deliver such person or persons to the keeper of such jail. *Provided*, the person or persons so arrested shall refuse or neglect to give such bail as the officer arresting may be authorized to require.

394. SEC. II. The keepers of such jail, shall and they are hereby authorized and required, to receive into their care and custody, any person or persons delivered to them in conformity to the preceding section, and him or them safely keep until they are delivered from thence according to law, or by direction or request of the plaintiff, his agent or attorney; *Provided*, that the plaintiff, his agent or attorney, shall give bond with sufficient security to the keeper of such jail, for the jail-fees and weekly maintenance of the person or persons so delivered to him for safe keeping.

Keeper of Jail must receive Prisoner.

Bond and Security must be given for maintenance.

### *Bond for Maintenance and Prison-fees.*

STATE OF GEORGIA, } We, *John Doe*, as principal, and *Richard Roe*,  
*Houston County*. } as security, acknowledge ourselves bound unto  
*Charles Smith*, Jailer of the County of *Bibb*, in the sum of *one hundred dollars*, subject to the following conditions—

Whereas, *Thomas Jones*, of the County of *Houston*, has been arrested (by virtue of a Writ of *Capias ad Satisfaciendum*, issued from the Superior Court of said County of *Houston*, in favor of said *John Doe*,) and conveyed to the Jail of the County of *Bibb*, for safe keeping. Now, should said *John Doe* pay the Jail-fees and weekly Maintenance of said *Thomas Jones*, during the time of his confinement in said Jail, then this Bond to be void; otherwise, of force. This *May 1*, 1859.

Approved—

*James Mack, J. P.*

*JOHN DOE*, principal. [L. S.]

*RICHARD ROE*, security. [L. S.]

NOTE.—The Plaintiff *must* pay the Maintenance of the Prisoner weekly, or he may be discharged on *Habeas Corpus*.

AN ACT to amend the Judiciary Law of 1799, in relation to Bail, and also to amend an act entitled “an act to amend the Judiciary Law of this State, passed the 16th day of February, 1799, so far as to authorize the issuing of Bail Process in certain cases,” passed the 8th day of November, 1820, so far as to authorize Agents, Attorneys-in-fact, or at law, to hold to Bail in all civil cases.—*Approved Dec. 26*, 1831.

395. SEC. I. From and after the passage of this act, it shall and may be lawful for any agent, attorney-in-fact, or at law, to hold to bail in all civil cases, and under the same rules and restrictions as are pointed out in the before-recited acts on that subject.

Agent or Attorney may hold to Bail.

396. SEC. II. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to authorize the issuing, suing and executing, Attachments on the Sabbath day, in certain cases.—*Approved Dec. 20*, 1834.

Whereas, it sometimes happens that persons residing near the lines of this State, leave the State on the Sabbath day, and thereby place it out of the power of their creditors to stop them or their property, to satisfy debts owing by them; for remedy whereof—

397. *Be it enacted*, That it shall hereafter be lawful to issue and serve attachments and bail processes on the Sabbath day; in the same manner and under the same rules, regulations and restrictions, as are now provided for the issuing and serving of the same on other days: *Provided*, the person or persons applying for such attachment or bail process, shall in addition to the oath heretofore required to be taken, swear that he apprehends the loss of his debt, or some part thereof, unless said attachment or bail process shall issue on the Sabbath day.

Attachment and Bail may be required on the Sabbath-day.



398. SEC. II. All laws and parts of laws that militate against this act, are hereby repealed.

AN ACT to define the mode of taking Bond in cases of Bail in this State.

—*Approved Nov. 24, 1841.*

Bail-Bond  
payable to  
Plaintiff.

399. SEC. I. From and after the passage of this act all bonds taken in cases of bail, in this State, shall be taken payable to the plaintiff in the cause, any law to the contrary notwithstanding.

AN ACT in relation to proceedings to recover Debts not due.—*Approved Dec. 27, 1845.*

Bail may be  
required be-  
fore the Debt  
is due.

Action may be  
commenced.

Judgment  
stayed.

400. SEC. I. When a debt is not due, and the debtor is about to remove, or is removing without the limits of this State, and oath being made by the creditor, his agent, or attorney-in-fact, or at law, of the amount of the debt to become due, and that the debtor is about to remove, or is removing, without the limits of this State, and that he has reason to apprehend the loss of said debt, or some part thereof, if the debtor be not held to bail; it shall and may be lawful for the creditor to commence an action or suit at law, and hold said debtor to bail, in the same way and manner, and under the same restrictions as where an affidavit is made under existing laws. And the bail so taken shall in like manner, be liable to the creditors: *Provided always*, that judgment shall not be rendered in any such case until after the debt has become due.

### *Affidavit under the above Statute.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *John Doe*, who, after being sworn according to law, says, that *Richard Roe*, of said County, is justly indebted to him, the sum of *five hundred dollars*, (by *Promissory Note*, to become due.) That the amount to become due is the sum of *five hundred dollars*. That said *Richard Roe* is removing, (or is about to remove, as the case may be,) without the limits of this State. And deponent further swears, that he has reason to apprehend the loss of said debt, or some part thereof, if the said *Richard Roe* be not held to Bail.

Sworn to and subscribed,  
before me, this *May 1, 1859*.  
*James Mack, J. P.*

JOHN DOE.

### *The Declaration.*

STATE OF GEORGIA, } *To the Superior Court of said County.*  
Houston County. } The Petition of *John Doe* sheweth that *Richard Roe*, of said County, is indebted to your Petitioner in the sum of *five hundred dollars*, by *Promissory Note*, to become due: for that, whereas, heretofore, to wit, on the *third day of April*, eighteen hundred and *fifty-eight*, the said *Richard* made his certain *Promissory Note*, and delivered the same to your Petitioner, and which is now here in Court, to be shown: whereby by the first day of *January*, next ensuing the date of said *Note*, and of the commencement of this action, he, the said *Richard Roe*, promised to pay Petitioner, or bearer, the said sum of *five hundred dollars*, for value received, which *Note* remains wholly unpaid. And your Petitioner avers that said *Richard Roe* is removing, (or is

about to remove, as the case may be,) without the limits of this State ; wherefore your Petitioner has reason to apprehend the loss of said Debt, or some part thereof, if the said *Richard Roe* be not held to Bail. By reason whereof, and by force of the statute in such case made and provided, the right of action hath accrued to your Petitioner in the premises : wherefore, your Petitioner brings suit and prays Process may issue, requiring the said *Richard Roe*, personally, or by attorney, to be and appear at the next *Superior Court* to be held in and for said County, to Answer your Petitioner in an action for Debt and Bail.

JAMES A. PRINGLE, *Plff's Att'y*.

AN ACT to authorize the Sheriff to take new Bail where the principal has been surrendered, in certain cases, and to make valid certain Bail-Bonds taken heretofore.—*Approved March 6, 1856.*

401. SEC. I. That in all cases hereafter, where the bail shall or may surrender his principal, either in open court in term-time, or to the sheriff of the county in which such principal shall reside, at any time in vacation, and before the principal has been arrested by a *capias ad satisfaciendum*, it shall be the duty of the sheriff to take new bail, if the bail offered is good ; for the forthcoming of the principal to be arrested with a *capias ad satisfaciendum*, in said case ; or in default thereof, to pay the debt and costs. And all bail heretofore taken, in the cases above mentioned, shall be deemed and adjudged to be good and valid in law ; and the bail bound in the same way and manner he would have been, if he had become bail before the passage of this act.

New Bail may be taken where the Principal has been surrendered.

SEC. II. [Repeals all conflicting laws.]

### *Bond under the above Act.*

[For the formal parts of this Bond see "Bail Bond."]

Whereas, *John Doe*, the security of *Richard Roe*, defendant, in an action of *Assumpsit* in *Houston Superior Court*, in favor of *Charles Smith*, (in which action Bail was originally required,) has surrendered the body of said *Richard Roe*, in discharge of his Bail-Bond in said action. And whereas, said *Richard Roe* tenders *William Jones*, as new and other security, who has been accepted and approved. Now, should said *Richard Roe* well and truly appear and submit to arrest on *Capias ad Satisfaciendum*, to be issued on the Judgment in said action of *Assumpsit*, and, on failure thereof, shall pay the Judgment and costs in said action ; and, on his failure, said *William Jones* do pay the Debt and Costs for him, then this Bond to be void ; otherwise, of force. This *May 1, 1859.*

Approved—  
*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S]  
WILLIAM JONES, *sec'ty.* [L. S.]

### IN ACTIONS OF TROVER, ETC.

AN ACT more effectually to Quiet and Protect the Possession of Personal Property, and to prevent taking Possession by fraud or violence.—*Approved Dec. 25, 1821.*

402. SEC. II. When any person who is about to commence an action or suit at law, or in equity, for the recovery of negroes, or other personal property, such person, his agent or attorney, shall make affidavit that he hath reason to apprehend that the said negroes or other personal property, Bail in actions of Trover, etc.



Liability of  
Security.

have been or will be eloiigned, or removed away, or will not be forthcoming to answer the judgment, execution or decree that shall be made in the case. And shall also state in his affidavit the value of the same, and the amount of hire claimed, if any, and add, that he, she or they, do verily and *bonâ fide*, claim the said negroes, or other personal property, or some valuable interest therein. A copy of such affidavit shall be annexed to the petition, bill, or other process, and the original affidavit filed in the court whence such process issues. And it shall be the duty of the sheriff, his deputy, or other lawful officer serving such petition, bill, or other process, to take a recognizance, with good security, in double the amount sworn to, for the forthcoming of such negroes or other personal property, to answer such judgment, execution or decree, as may be issued or rendered in the case. And such security shall be bound for the payment of the eventual condemnation money, and liable to execution, in the same manner as securities upon appeals. And when such affidavit shall be made during the pendency of any process, a copy thereof, and of the process or subpœna, shall be served in like manner by the sheriff or his deputy, or other lawful officer, and the like security taken. And upon the defendant refusing to give such security, the property shall be seized and taken by the sheriff, or other lawful officer, and delivered over to the plaintiff or complainant, his agent, or attorney, entering into a like recognizance with security. And if such property is not produced or forthcoming, to be seized and taken by such sheriff, or other lawful officer, the defendant or defendants shall be committed to jail, to be kept in safe and close custody until the same is produced, or until he, she or they, shall enter into security for the eventual condemnation money, in the nature of security upon appeal.

### *Affidavit of the Plaintiff.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *John Doe*, who being sworn, saith that *he is about to commence*, (or has commenced, as the case may be,) his action of *Trover*, in the *Superior Court* of the County aforesaid, against *Richard Roe*, returnable to the *next ensuing term* of said Court; for a *certain Negro man named Jacob*, of the value of *eight hundred dollars*, and of the yearly value for hire, of *one hundred dollars*. That deponent does, verily and *bonâ fide* claim said *Negro man as his right and property*, (or some valuable interest in said *Negro man*, as the case may be.) And that deponent has reason to apprehend that said *Negro man* will be *eloiigned*, (or removed away, or will not be forthcoming, as the case may be,) to answer the Judgment in said action of *Trover*, (or Execution, or Decree, as the case may be,) unless said *Richard Roe* shall be required to enter into Recognizance, agreeably to the statute in such case made and provided.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }  
*James Mack, J. P.*

JOHN DOE.

### *Declaration in Trover.*

STATE OF GEORGIA, }  
Houston County. } To the *Superior Court* of said County.

The Petition of *John Doe* sheweth, that *Richard Roe* of said County, hath damaged your Petitioner in the sum of *one thousand dollars*: for

that your Petitioner, heretofore, to wit, in the County aforesaid, on the first day of *January*, eighteen hundred and *fifty-eight*, was lawfully possessed, as of his own property, of a *Negro man named Jacob*, of yellow complexion, twenty-five years of age, of the value of eight hundred dollars, and of the yearly value for hire, of one hundred dollars. And being so possessed thereof, your Petitioner afterwards, on the day and year above mentioned, in the County aforesaid, lost said *Negro man Jacob* out of his possession. And said *Negro man Jacob*, afterwards, on the day and year aforesaid, in the County aforesaid, came to the possession of said *Richard Roe* by finding. Yet the said *Richard Roe*, well knowing the said *Negro man Jacob*, to be the property of your Petitioner, and of right to belong and appertain to him, (but contriving and fraudulently intending, craftily and subtly to deceive and defraud your Petitioner in this behalf,) hath not as yet delivered said *Negro man Jacob* to your Petitioner, although often requested so to do, but hath hitherto wholly refused so to do. And afterwards, to wit, on the day and year aforesaid, in the County aforesaid, said *Richard Roe* converted and disposed of said *Negro man Jacob*, to his own use, to the damage of your Petitioner, two thousand dollars. Wherefore your Petitioner brings suit and prays Process may issue, requiring the said *Richard Roe*, to be and appear at the next *Superior Court* to be held in and for said County, to answer your Petitioner in an action of *Trover*. And your Petitioner, etc.

SIMON WADE, *Pl'ff's Att'y*.

### Recognizance.

STATE OF GEORGIA, } Be it remembered, that on the first day of *May*,  
Houston County. } eighteen hundred and *fifty-eight*, we, *Richard Roe*  
as principal, and *Charles Smith* as security, both of said County, do  
acknowledge to owe *John Doe* and his assigns, the sum of *sixteen hun-*  
*dred dollars*, subject to the following conditions—

Whereas, said *John Doe* has commenced, (or is about to commence, as the case may be,) his action of *Trover* against the said *Richard Roe*, returnable to the *Superior Court* of said County, for a certain *Negro man named Jacob*, of the value of *eight hundred dollars*. Now, should the said *Richard Roe* well and truly produce and have forthcoming said *Negro man Jacob* to answer such Judgment (Execution or Decree, as the case may be,) as may be issued or rendered against him in said action of *Trover*; and well and truly pay the eventual condemnation money recovered in said case, then this Recognizance to be void; otherwise, of force.

[Executed in presence of } RICHARD ROE, *principal*. [L. S.]  
W. H. Miller, Clerk, S. C. } CHARLES SMITH, *security*. [L. S.]

### IN ACTIONS EX DELICTO.

AN ACT to authorize Justices of the Inferior Court to grant Orders to hold to Bail in cases arising *ex delicto*.—Approved Feb. 16, 1854.

403. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for any justice of the Inferior Court of this Justice of I.  
C. may grant  
Order for  
Bail.



State, to grant an order to hold to bail in all cases sounding in damages, whether the case shall be made returnable to the superior or inferior court of the county in which such justice may reside.

Effect of Order  
so granted.

404. SEC. II. That said order when so granted, shall have the same force and effect as if granted by a judge of the superior court.

SEC. III. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.

*Order by the Justice of the Inferior Court.*

STATE OF GEORGIA, } To the Clerk of the *Superior* Court, and to the  
Houston County. } Sheriff of said County.

The Declaration and Affidavit of the Plaintiff having been presented to me, you the said Clerk, are hereby required to issue Bail-process against the Defendant, in the sum of *two thousand* dollars. And you the said Sheriff are required to execute said Bail-process, according to the statute in such case made and provided.

*Witness my hand and official signature, this May 1, 1859.*

HENRY M. HOLTZCLAW, J. I. C.

AN ACT to simplify the proceedings in Bail Cases, and for other purposes therein mentioned.—*Approved Dec. 21, 1857.*

Process and  
copy-affidavit  
must be serv'd  
on Defendant.

405. SEC. I. Whenever bail shall be required in any case about to be instituted in the courts of this State, it shall be lawful and sufficient to serve the defendant with a process and copy of the affidavit, as in cases of bail pending the action; and at the term to which said process is returnable, the plaintiff shall file his declaration; and the subsequent proceedings, shall be as in other cases.

Declaration  
filed at the ap-  
pearance t'rm.

Sheriff must  
arrest Defend-  
ant and take  
Bail, etc., as in  
other cases.

406. SEC. II. Whenever such process, with a copy of the affidavit annexed, and a copy or copies of such process and affidavit shall be placed in the hands of the sheriff, it shall be his duty to arrest the defendant or defendants; to serve him, her or them, with a copy or copies of said process and affidavit, and to deal with him, her or them, as is now required by the laws of force in this State, regulating cases where bail is required.

The proceed-  
ings under  
this act per-  
missive, not  
obligatory.

Substantiated  
compliance  
sufficient, and  
case to pro-  
ceed, though  
Bail discharg-  
ed for irregu-  
larity.

407. SEC. III. Nothing in this act shall be held to repeal any portion of the laws heretofore of force, regulating cases in which bail may be required, but shall be construed to be permissive only, and not compulsory, as to the form to be used.

408. SEC. IV. A substantial compliance with this act, as to service upon the defendant or defendants, shall be deemed sufficient to authorize the case to proceed, as against such defendant or defendants, notwithstanding the bail may be discharged for irregularity in the process, affidavit, copies or service.

Surety or En-  
dorsor may  
make Affida-  
vit, etc., upon  
the doing of  
which, holder  
must com-  
mence suit.

AN ACT for the protection of Securities and Endorsers, and to authorize the issuing of Bail Process in certain cases.—*Approved Dec. 22, 1857.*

409. SEC. I. That when a security or endorser shall make an affidavit before any judge, justice of the inferior court, or justice of the peace, within this State, that he is security or endorser, upon any promissory note, single-bill, or due-bill, or bond, and that he apprehends that the payment of said debt, or some part thereof, will devolve upon himself, if the principal is not held to bail, and present the same to the owner (of said note, single-bill, or due-bill, or bond,) his agent or attorney, it shall be the duty of said owner, to commence suit forthwith, and such affidavit shall take the place of the one

now required of plaintiff; upon which bail process shall issue. And all other proceedings shall be the same as are now authorized in bail process [*cases.*]

410. SEC. II. That upon failure of the owner of said promissory note, single-bill, or due-bill, or bond, to sue, as herein-before required, the security or endorser shall no longer be held liable for the same. All laws to the contrary notwithstanding.

Or Surety or Endorser discharged from liability.

*Affidavit under the above Statute.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } *Justice of the Peace*, in and for said County, *John Doe*, who being sworn saith, that he is *Security* on a *Promissory Note* for one hundred dollars, given by *Richard Roe* to *John Smith*; and that deponent apprehends that the payment of said *Note*, or some part thereof, will devolve upon himself, if the said *Richard Roe* is not held to Bail.

Sworn to and subscribed,  
before me, this *May 1*, 1859, }  
*James Mack, J. P.*

JOHN DOE.

CLAIM.

AN ACT to alter and amend so much of the thirty-second section of the Judiciary, passed the 16th of February, 1799, as respects Claims of property, in the Superior and Inferior Courts of this State.—*Approved Dec. 15, 1821.*

*Whereas*, various constructions have been given in the different Courts of this State, as it regards Claims of property, which tend to the manifest injury of the community, and frequently produced not only injustice to the Plaintiffs-in-Execution, but evidently to oppress and harrass them by delays of justice—

411. SEC. I. *Be it therefore enacted*, That when any sheriff or coroner shall levy an execution on property claimed by any person not a party to said execution, such person shall make oath [*see 417,*] to said property. And it shall be the duty of such sheriff or coroner to postpone the sale, or future execution of the judgment, until the next term of the court from whence said execution issued: *Provided*, the said execution is or should be levied on personal property, but should said execution be levied on real property, and the same should be claimed in manner aforesaid, then and in that case, it shall be the duty of the officer making the levy upon real property, to report the same, together with the execution and claim, to the next term of the superior court of the county in which the land so levied on shall lie. And the court to which such claim shall be reported, shall cause the right of property, to be decided on by a jury, at the first term, unless special cause be shown to induce said court to continue the case for one term and no longer: *Provided*, the person claiming such property, or his agent, or attorney, shall give bond to the sheriff or coroner, as the case may be, with good and sufficient security, in a sum equal to double the amount of the property levied on, at a reasonable valuation, to be judged of by the levying-officer, conditioned to pay the plaintiff all damages which the jury on the trial of the right of property, may assess against him, in case it should appear that said claim was made for the purposes of delay. And every juror, on the trial of the claim of property, either real or personal, shall be sworn, in addition to the oath usually administered, to

Claimant must make Oath.  
Officer must return Claim.

Land must be tried in the County where it lies.

Claim to be tried at the first term.

Claimant must give Bond and Security.

Condition of the Bond.

Additional Oath as to damages.



Judgment may be entered up against Claimant and his Securities. Burden of proof on Plaintiff-in-Execution. Claimant not to discontinue Claim but once.

give such damages, not less than ten per cent., as may seem reasonable and just, to the plaintiff against the claimant, in case it shall be sufficiently shown, that said claim was made for delay only. And it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up against such claimant and his security or securities, for the damages so assessed by the jury, and the costs of the trial of the right of property: *And provided also*, that the burden of proof shall lie upon the plaintiff-in-execution, in cases where the property levied on, is at the time of such levy, not in the possession of the defendant in execution.

412. SEC. II. Whenever such claim of property may be made in terms of this act, the person claiming property levied on and returned to the proper court, by said sheriff or coroner, shall not be permitted to withdraw or discontinue his said claim, more than once, without consent and approbation of the plaintiff-in-execution, or some person duly authorized to represent such plaintiff; but said court shall proceed to the trial of said claim of property in manner aforesaid. And it shall be the duty of the jury to award damages accordingly: *And provided further*, that either party who may be dissatisfied with the verdict of said jury, may enter his, her or their appeal, to a special-jury in the superior court of the county where said trial shall have been had; which appeal shall be subject to the same rules and regulations as govern in appeals in ordinary cases.

Jury must award damages. Either party may Appeal.

Act of 1799 repealed.

413. SEC. III. So much of said thirty-second section of the judiciary act of 1799 as regards claims of property, which may militate against this act is hereby repealed.

### *Claimant's Affidavit.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } *Justice of the Peace*, in and for said County, *Charles Smith*, who being duly sworn, deposeth and saith, that *a certain Negro Fellow named Jacob, of yellow complexion, and twenty-five years of age*, (who has been levied on by *Madison Marshall*, Sheriff of said County, by virtue of a *fieri facias* issued from the *Superior Court* of said County, in favor of *John Doe* against *Richard Roe*,) as the property of said *Richard Roe*, is the property of deponent.

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.*

CHARLES SMITH.

### *Claimant's Bond for Damages.*

STATE OF GEORGIA, } We, *Charles Smith* as principal, and *William Houston County.* } *Jones* as security, both of said County and State, hereby acknowledge ourselves held and bound to *John Doe*, Plaintiff-in-Execution, in the sum of *one thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, *a certain Negro Fellow named Jacob, twenty-five years of age*, has been levied on by *Madison Marshall*, Sheriff of said County, by virtue of a *fieri facias* issued from the *Superior Court* of said County, in favor of *John Doe* against *Richard Roe*,) which *Negro Fellow* is claimed by said *Charles Smith*, as his property: now, should said claimant, well and truly, pay all the Damages which the Jury on the trial of the right of property may assess against him, in case it should appear that said claim was

made for the purposes of delay, then this obligation to be void, otherwise of force. This *May* 1, 1859.

Attest—  
*James Mack, J. P.*

CHARLES SMITH, *principal*. [L. S.]  
WILLIAM JONES, *security*. [L. S.]

AN ACT to provide for the trial of Claims of Slaves levied on under Execution.—*Approved Dec. 7, 1824.*

414. In all cases where a writ of execution from a justices' court shall have been levied on one or more slaves, and a claim to such slaves shall have been interposed, according to the laws in force for the time being, such execution and claim shall be returned to the next term of superior or inferior court, whichever may first happen, of the county in which such execution was issued, and shall be there tried in the same manner as other claims which by law are or shall be returnable to those courts respectively.

Justice's Execution when levied on Slave, Claim to be tried in Superior or Inferior Court.

AN ACT to define and make certain the mode of assessing Damages, upon the trial of Claims of property in the Superior and Inferior Courts in this State.—*Approved Dec. 21, 1829.*

*Whereas*, doubts have been entertained whether upon the trial of Claims of property, Damages should be assessed upon the amount of the Execution, or the value of the property claimed, or upon the amount of the claim-bond; for remedy whereof—

415. *Be it enacted*, That from and immediately after the passage of this act, upon claims of property now pending, or which may be hereafter pending, in the superior or inferior courts of this State, where damages shall be found by [the] jury, the said damages shall be assessed upon the whole amount then due upon the execution levied: *Provided*, the value of the property in dispute exceeds the amount of said execution. And upon the value of the property claimed when the same is less than the amount of the execution levied. Any law, usage or custom, to the contrary notwithstanding.

How Damages on Claims are to be assessed.

AN ACT to amend the several acts regulating Attachments in this State, and to regulate proceedings in certain cases, when the Plaintiff shall die after rendition of Judgment.—*Approved Dec. 29, 1836.*

416. SEC. VI. In all cases where any claim shall be interposed for property levied on by virtue of a *fiери facias* from any of the courts of this State, and pending such claim the plaintiff shall die, it shall and may be lawful for the executor or executors, administrator or administrators, of such deceased plaintiff, upon motion, in the court where such claim is pending, to be made parties instanter; and the said case shall proceed without further delay: *Provided*, the said executors or administrators, shall produce in court their letters testamentary or of administration: *And provided*, they shall give to the claimant, or his attorney, twenty days' notice of the said intended application to make such parties. *And provided always*, in such cases, where there are more than one plaintiff, the cause shall proceed in the name of the survivor. And this act shall not be applicable, except when the last surviving plaintiff shall die while such claim is pending.

How party to be made if Plaintiff die during pendency of Claim. Letters must be produced. Must give Notice.

SEC. VII. All laws and parts of laws militating against this act, are hereby repealed.



AN ACT to amend the Claim Laws now in force in this State.—*Approved Dec. 21, 1839.*

Agent or At-  
torney may  
Claim.

417. SEC. I. *Be it enacted*, That upon the levy of any execution hereafter to be made, upon any property, whether real or personal, it shall be lawful for any person or persons desiring to claim the same, to do so by him, her or themselves; his, her or their agent or attorney; in the same manner and under the same restrictions as are provided for the issuing of Attachment.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

Forthcoming  
Bond under  
Claim.

AN ACT to be entitled an act to Alter and Amend the Claim Laws of this State.—*Approved Dec. 11, 1841.*

418. *Be it enacted*, That in all cases of claim, whether the levy be made under attachment or execution, the amount of any bond given for the forth-coming of the property levied on, shall be in double the value of such property, to be estimated by the levying-officer. And all such bonds shall be made payable to the plaintiff in attachment or execution, who may sue and recover on the same, upon breach of the condition thereof.

### *Forthcoming Bond under Claim.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *Samuel*  
*Houston County.* } *Webb* as security, both of the State and County  
aforesaid, hereby acknowledge ourselves held and bound to *John Doe*  
Plaintiff-in-Execution, in the sum of *two thousand* dollars, subject to  
the following condition—

The condition of the above obligation is as follows—whereas, *Madison Marshall*, Sheriff of said County, has levied a *fieri facias*, (issued from the *Superior Court* of said County, in favor of *John Doe* against *Richard Roe*,) on a certain *Negro Fellow* named *Jacob*, as the property of said *Richard Roe*. And whereas *Charles Smith* hath claimed said *Negro Fellow* as his property: now should said *Richard Roe*, well and truly deliver said *Negro Fellow* to said *Sheriff*, at the day and time of sale, provided said *Negro Fellow* should be found subject to said *fieri facias*, then the above obligation to be void; otherwise of force. This *May 1, 1859.*

Attest—  
*James Mack, J. P.*

*RICHARD ROE, principal.* [L. S.]  
*SAMUEL WEBB, security.* [L. S.]

### *Issue in Claim Case.*

*April Term, 1859.* And now at this Term, comes the Plaintiff-in-Execution, by his Attorney *John M. Giles*, and says, that the *Negro Fellow Jacob*, who has been levied upon as the property of *Richard Roe*, and claimed by *Charles Smith* as his property, is the property of said *Richard Roe*, Defendant-in-Execution; and that said *Negro Fellow Jacob*, is subject to satisfy the Execution levied on him, in favor of Plaintiff, and this he prays may be inquired of by the country, &c.

*JOHN M. GILES, Pl'ff's Att'y.*

And the Claimant doth the like, and saith, that said *Negro Fellow Jacob*, is not subject to said Execution, &c.

JAMES A. PRINGLE, *Cl'm'ts Att'y*.

### *Oath of the Jury.*

"You do solemnly swear, that you will give such damages, not less than ten per cent. as may seem reasonable and just, to the Plaintiff against the Claimant, in case it shall be sufficiently shown that said Claim was made for delay only—so help you God."

### *Verdict of the Jury.*

We, the Jury, find the property in dispute *subject* to the Execution. And we further find *fifteen* per cent. Damages, upon the *whole* amount of the execution, against the Claimant, for a frivolous Claim, and the Costs of suit.

MARCUS KUNZE, *Foreman*.

### *Judgment of the Court.*

Whereupon, it is considered and adjudged by the Court here, that said *Negro-Fellow Jacob*, the property levied on, is subject to the *feri facias* levied on *him*, and that the *Sheriff* proceed to collect the amount of said *feri facias* by sale of the condemned property. Judgment signed, this *October 26*, 1859.

JOHN M. GILES, *Pl'ff's Att'y*.

### *Judgment for Damages and Costs.*

Whereupon, it is considered and adjudged by the Court here, that the Plaintiff-in-Execution do recover against the claimant *Charles Smith*, and his Security *William Jones*, the sum of *one hundred* dollars for his damages, and the sum of *fifteen* dollars for his costs, in this behalf expended. And the Claimant and his Security, in mercy, etc. Judgment signed, this *October 26*, 1859.

JOHN M. GILES, *Pl'ff's Att'y*.



## NEW TRIAL.

New trial may be granted. 420. SEC. LV. The said superior courts shall have power to correct errors and grant new trials, in any cause depending in any of the said superior courts, in such manner and under such rules and regulations as they may establish, and according to law, and the usages and customs of courts.

How. 421. SEC. LVII. In any case which has arisen since the signing of the present constitution, or which may hereafter arise, of a verdict of a special jury being given contrary to evidence and the principles of justice and equity, it shall and may be lawful for the judge presiding to grant a new trial, before

Notice must be given. another special-jury, in the manner prescribed by this act: *Provided*, that twenty days' notice be given by the party applying for such new trial, to the adverse party, of his intention, and the grounds of his application. And the Judge must enter his opinion. said judge shall, in all cases of application for new trials, or correction of errors, enter his opinion on the minutes of the court, for his determination on each respective case.

Before a Special Jury. 422. SEC. LVIII. All new trials shall be had by a special-jury, to be taken from the grand-jury list of the county.

New Trials how tried. 423. All new trials shall be had by a special-jury to be taken from the grand-jury list of the county, and struck in the presence of the court, in the following manner. The clerk shall produce a list of the original pannel of Jury how formed. grand-jurors, returned to the term in which such trial shall be had, from which the parties or their attorneys shall alternately strike out one until only twelve shall remain, who shall forthwith be impannelled and sworn to try the cause.

Who entitled to first strike. And in all cases the party applying for such new trial, shall strike first. And presiding shall order some officer of the court, or other person, to proceed to strike the said jury, in the same manner as the party refusing might or could have done. And it shall be the duty of all persons summoned on the grand-jury, to attend the courts for the purpose of determining such new trials, From whom Jury formed. whether they be sworn on the grand-jury or not.

NOTE.—The Practice is, to apply for a Rule *Nisi*, at the Term at which the Verdict has been rendered. If the Rule be granted, (which is generally made returnable at the succeeding Term,) it is entered, by the Clerk, on the Motion Docket, and a copy is served on the opposite Counsel; or, what is more usual, the Counsel acknowledges service and waives copy, on the back of the Rule. If it be desired that the Rule should act as a supersedeas, it must be so expressed, in the body of the Rule.

AN ACT to regulate the granting of New Trials.—*Approved February 20, 1854.*

Superior Courts must grant New Trials; in what cases. 424. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be obligatory upon the superior courts of this State, to grant new trials in all cases where an exception to any portion of the pleadings may be illegally sustained, or illegally overruled by the presiding judge, against the applicant for a new trial; in all cases where any evidence may be illegally

submitted to, or illegally withheld, from the jury, against the demand of such applicant; in all cases where the presiding judge may deliver an erroneous charge to the jury, against such applicant, or refuse to give a legal charge in the language requested, when the charge so requested is submitted in writing; and in all cases where any evidence, not merely cumulative in its character, but relating to new and material facts, shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time now allowed by law for entertaining a motion for a new trial.

425. SEC. II. That it shall be obligatory upon the supreme court of this State, to reverse the judgment below and award a new trial in every case, where it shall appear that an error has been committed in any of the points enumerated in the first section of this act, by the judge presiding at the trial of the cause.

Supreme  
Court must  
order New  
Trial.

426. SEC. III. That the judges of the superior courts may have the power to exercise a sound discretion in granting new trials in cases where the verdict may be decidedly and strongly against the weight of evidence, although there may appear some slight evidence in favor of the finding. And the supreme court shall have power to revise and control such discretionary power in the superior courts.

Judge to grant  
New Trial on  
discretion, in  
certain cases.

427. SEC. LXI. The act entitled "an act to revise and amend the judiciary system of this State," passed at Louisville, on 9th February, 1797, from the first to the 67th clause inclusive, be and the same is hereby repealed.

A portion of  
1797 repealed

No justice of the peace shall sustain or try any satisfaction in damages, for any trespass on the person or property of such plaintiff.

No Trespass  
in Justices'  
Courts.

## EXECUTION, CONTROL, ETC.

428. SEC. XXXII. In all cases where execution shall issue illegally, and the person against whom such execution may be, shall make oath thereof, and shall state the causes of such illegality, such sheriff shall return the same to the next term of the court out of which the same issued, which court shall determine thereon, at such term.

Illegal Execu-  
tion.

429. SEC. XXXIII. No sales in future shall be made by sheriffs, of property taken under execution, but on the first Tuesday in each month, and between the hours of ten and three in the day, [see *sheriff*.] And it shall be the duty of the sheriffs to give thirty days' notice in one of the public gazettes of the State, of all sales of lands and other property executed by him. And also, advertise the same in three of the most public places in the county where such sales are to be made. And shall give a full and complete description of the property to be sold; making known the name of the defendant, and the person who may be in possession of the property, except horses, hogs and cattle, which may be sold at any time by the consent of the defendant; and in which case it shall be his duty to give to the plaintiff ten days' notice thereof; and also, to advertise the same in three or more of the most public places in the county where such property may be, at least ten days before the sale.

Sheriffs' sales  
under Execu-  
tion, how to  
be conducted.



## ILLEGALITY OF EXECUTIONS.

*Affidavit of Illegality.*

GEORGIA—HOUSTON COUNTY.

JOHN DOE } *Fi. fa.* from the Superior Court, returnable to Octo-  
           <sup>vs.</sup> } ber Term, 1858. \$500 principal debt, etc.  
 RICHARD ROE. }

Before the undersigned, personally appeared *Richard Roe*, Defendant in the above-stated *fi. fa.*, who being sworn according to law, saith, that the above-mentioned *fi. fa.* is proceeding against him illegally, for the following reasons, to wit—

*First*, because, etc. [*Stating the grounds.*]

*Secondly*, because, etc. [*Stating the grounds.*]

Sworn to and subscribed,  
 before me, this *May* 1, 1859. }

*James Mack, J. P.*

RICHARD ROE.

*Issue formed on the above Affidavit.*

And now at this Term, comes the Plaintiff in Execution, by his Attorney, *James A. Pringle*, and says, that, [*traversing the first ground of illegality;*] that, [*traversing the second ground of illegality, etc.*] but that said *fi. fa.* is open for the full amount thereof. And this the Plaintiff prays may be inquired of by the country, etc.

JAMES A. PRINGLE, *Att'y pro Pl'ff in fi. fa.*

*Joining Issue.*

And the Defendant in Execution, by *John M. Giles*, his Attorney, doth the like, etc.

JOHN M. GILES, *Att'y pro Def't in fi. fa.*

*Verdict of the Jury.*

We, the Jury, find the Issue in favor of the *Plaintiff* in Execution.

JAMES LONG, *Foreman.*

*Judgment of the Court.*

JOHN DOE } *Fi. fa.* and Issue joined on Illegality.  
           <sup>vs.</sup> }  
 RICHARD ROE. }

The above Issue having been submitted and tried, at the present Term; and the Jury having returned their Verdict, upon said Issue, in favor of the *Plaintiff* in Execution, it is therefore, on motion, ordered and adjudged by the Court, that the Illegality filed in said case, be overruled and dismissed. And it is further ordered, that said *fi. fa.* proceed. And it is further ordered, that the *Plaintiff* in *fi. fa.* do recover from the Defendant, *ten* dollars for his costs and charges, in this behalf sustained. Judgment signed this *May* 10, 1859.

JAMES A. PRINGLE, *Att'y pro Pl'ff in fi. fa.*

AN ACT to amend the thirty-second section of the Judiciary System of this State, passed the 16th day of February, 1799, so far as relates to Illegality in Executions.—*Approved Dec.* 28, 1838.

430. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, when any person against whom an execution shall issue illegally, shall make oath thereof, and shall state the cause of such illegality, the sheriff shall return the same to the next term of the court from which such execution issued: *Provided*, that the person alleging such illegality, shall also deliver to the sheriff or other lawful officer, a bond with good and sufficient security, conditioned for the delivery of the property levied on, at the time and place of sale, in the event of the causes or grounds of the alleged illegality being overruled by the court, and not otherwise. And in all cases it shall be the duty of the sheriff or other officer, to levy on property, where any can be found, before receiving such affidavit.—[See 431.]

Illegality how returned.

Forthcoming Bond to be given.

Levy must be made.

SEC. II. All laws or parts of laws repugnant to this act, be and the same are hereby repealed.

### *Forthcoming Bond.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *Charles Smith*  
*Houston County.* } as security, acknowledge ourselves held and bound to *Madison Marshall*, Sheriff of said County, in the sum of *two thousand dollars*, subject to the following condition—

The condition of the above obligation is such—that whereas, said Sheriff has levied a *fi. fa.* issued from the Superior Court of said County, in favor of *John Doe* against *Richard Roe*, for the sum of *one thousand dollars*, principal debt, besides interest and costs, upon a certain Negro Fellow named *Jacob*, of yellow complexion, about *twenty-five* years of age. And whereas, said *Richard Roe* has filed an Affidavit of Illegality against said *fi. fa.* returnable to the next ensuing term of the Court from which said *fi. fa.* issued: now, should said *Richard Roe*, well and truly deliver said Negro Fellow *Jacob* to said Sheriff, at the time and place of sale, in the event of the causes or grounds of the alleged illegality being overruled by the Court, then the above obligation to be void; otherwise of force. This *May 1, 1859.*

Approved,—  
*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
 CHARLES SMITH, *sec'ty.* [L. S.]

AN ACT in relation to Affidavits of Illegality.—*Approved Dec. 27, 1845.*

431. SEC. I. *Be it enacted*, That when any affidavit of illegality shall be filed in terms of the law, for the purpose of staying proceedings when an execution is levied on property, the property so levied on, shall be subject to levy and sale under other executions. And the officer making the first levy, shall claim, receive, hold and retain such an amount of the proceeds of sale as the court shall deem sufficient to pay the execution first levied, including interest up to the time of the court, at which said illegality shall be determined. And any bond given by the defendant on filing such affidavit, shall be released and discharged, so far as relates to the property sold.

Pending Illegality other *fi. fas.* may be levied on same property,

Bond discharged.

AN ACT in relation to Affidavits of Illegality of Executions.—*Approved Feb. 22, 1850.*

432. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for the defendant or defendants in execution, in cases of illegality of execution, by leave of the court, to make any amendment of the affidavit of illegality which the defendant or defendants may deem necessary, and which amendment may be made, either by the insertion of new grounds of illegality, or the correction of errors and mistakes in the affidavit of

Affidavits of Illegality amendable.



illegality. And the said amendments when made and sworn to, shall be taken as part of the original affidavit: *Provided always*, that the amending party shall not be entitled to any delay or continuance of said case to which he would not have been entitled in case his affidavit had been perfect in the first instance.

Continuance  
allowed. 433. SEC. II. Whenever an amendment is made under the provisions of this act, the plaintiff in execution or his counsel, if surprised by the amendment, shall and may move a continuance of the case, and the court shall charge the continuance to the amending party.

AN ACT to amend the thirty-first section of the Judiciary act of 1799.—*Approved Dec. 14, 1811.*

Fi. fa. how  
issued and  
levied. 434. SEC. I. All executions shall be issued and signed by the clerks of the several courts, in which judgments shall be obtained, and bear *teste* in the name of one of the judges, or presiding justices of such courts, and shall bear date from the time of issuing; shall be directed "to all and singular the sheriffs of this State," and may be levied on the estate, both real and personal, of the defendant or defendants; or issue against the body of the defendant, at the option of the plaintiff. Which execution shall be of full force until satisfied, without being obliged to be renewed on the court-roll, from year to year, as heretofore practised. And when the defendant shall point out any property on which to levy the execution, being in the hands and possession of any person not a party to such judgment, the sheriff shall not levy thereon, but shall proceed to levy on such property as may be found in the hands and possession of the defendant; who shall nevertheless, be at liberty to point out what part of his property he may think proper, which the sheriff shall be bound to take and sell first, if the same is in the opinion of the sheriff, sufficient to satisfy such judgment.

Not required  
to be renew'd. Property in  
Defendant's  
possession to  
be first sold. Defendant  
may point out  
property.

Ca. sa. not  
satisfied, fi. fa.  
may issue. 435. SEC. II. Where any execution shall have issued, or may hereafter issue, against the body of any defendant, and the same shall not have been satisfied, it shall be lawful for an execution to issue against the property of such defendant or defendants on the return of said execution, which had been issued against the body of the said defendant or defendants. And that when an execution against the body of any defendant shall have been served, the party on whom the same shall have been served shall be released: *Provided*, he, she or they, shall deliver to the officer serving the same, the property which shall, in the opinion of such officer, be sufficient to discharge the debt and all costs, and give sufficient security to the said officer, that the property so delivered is *bonâ fide* the property of the defendant or defendants, and subject to the discharge of the said debt, in which case, the officer shall return the execution so issued against the body of the defendant or defendants, and take out an execution against the property of such defendant or defendants, and proceed to advertise and sell the property so delivered up to satisfy such execution as heretofore practised.

Defendant  
may be re-  
leased by de-  
livering a  
sufficiency of  
property to  
the Officer. Ca. sa. to be  
returned and  
fi. fa. to issue,  
and property  
sold.

### *Writ of Fieri Facias.*

STATE OF GEORGIA, } *To all and singular, the Sheriffs of this —*  
Houston County. } *State Greeting.*

We command you, that of the goods and chattels, lands and tenements of *John Doe*, you cause to be made the sum of *one thousand* dollars, for principal Debt; the sum of *fifty* dollars, for Interest to this date, and the sum of *twenty* dollars cost. Which lately, to wit, on the *twentieth* day of *April*, eighteen hundred and *fifty-nine*, *Richard Roe*, in our *Superior* Court, held in and for said County, recovered against said

*John Doe*, whereof the said *John Doe* is convicted and liable, as appears to us of record.

And have the said moneys before our said *Superior Court*, to be held on the *fourth Monday in October* next, to render to the said *Richard Roe*, his damages, costs and charges aforesaid. And have you, then and there, this Writ.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this May 1, 1859.

WILLIAM H. MILLER. Clerk.

### *Bond under the foregoing Statute.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Doe*  
Houston County. } as security, acknowledge ourselves held and bound  
unto *John L. Halstead*, sheriff of said County, in the sum of *one thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* has been arrested by said Sheriff by virtue of a Writ of *Capias ad Satisfaciendum*, issued from the *Superior Court* of said County, in favor of *Charles Smith*, for the sum of *five hundred* dollars. And whereas, said *John Doe* has delivered to said Sheriff, a certain *Negro boy named Julius*, as his property. Now, should said *Negro boy*, prove to be *bond fide* the property of said *John Doe*, and subject to the discharge of the said deb, then this obligation to be void; otherwise of force. This *May 1, 1859*.

Attest—

*James Mack, J. P.*

JOHN DOE, prin'l. [L. S.]

RICHARD ROE secu'ty. [L. S.]

AN ACT to make Bank and other Stock, subject to Execution.—*Approved Dec. 21, 1822.*

436. From and after the passing of this act, the shares or stock owned by any person in any of the banks, or other corporations, in this State, shall be subject to be sold by the sheriff, or his deputy, under execution. Bank Stock subject to Execution.

437. SEC. II. When any sheriff, or his deputy, shall have placed in his hands, any execution against any person who owns any stock or shares in any of the banks or corporations, of this State, it shall be lawful, and he is hereby required, on application of the plaintiff, his agent or attorney, to endorse on said execution, a levy of the number of shares belonging to the defendant, and after advertising the same, agreeably to the law regulating sheriffs' sales, shall thereafter proceed to sell the said shares or stocks: *Provided always*, that he shall set up one share at a time, and shall sell no more than is sufficient to satisfy the amount of executions then in his hands. How levied on and sold.

438. SEC. III. When any constable shall have any execution placed in his hands against any person who is the owner of any shares or stock in any bank, or other corporation, in this State, it shall be lawful, and he is hereby required, on the application of the plaintiff, his agent or attorney, to endorse a levy on said execution or executions, in like manner. And it shall be his duty to make return of the same to the sheriff of the county in which he lives, which said sheriff shall proceed to sell, as pointed out by the second section of this bill. Constable's duty in levying on Bank Stock.

439. SEC. IV. When the sheriff, or his deputy, shall sell any shares in any bank, or other corporation, in this State, he shall give a certificate of such sale to the purchaser. Certificate to be given by the Sheriff.

440. SEC. V. The officer of the bank, or other corporation, whose duty



Bank-officer's duty as to transfer. it may be to make transfers of stock, on the books of the bank, or other corporation, shall and he is hereby required, to make a transfer of the stock purchased under this act, to the purchaser of the same, upon his, her or their producing [*the*] certificate or certificates of the said officer.

Transfer by Defendant after Judgment void. 441. SEC. VI. Any Transfer made by the defendant of his bank, or other stock, after judgment obtained against him or her, shall be void: *Provided*, that notice of the obtainment of such judgment be served on the cashier of such principal bank, or any of its branches, or the proper officer of such other corporation, within twenty days after said judgment is obtained.

AN ACT for the Relief of Securities.—*Approved December 22, 1840.*

*Whereas*, great inconvenience arises, and often great injustice [*is*] done to individuals, being parties in execution, under the existing law, as Co-securities—for the fact, that whereas, one Security, as the case may be, having been compelled, under Execution, to pay the debt or obligation of his principal, is not allowed to control or collect, by said Execution, each Security's proportionable part of said Execution, so paid; but must proceed by an action at law; for remedy whereof—

Security paying off *fi. fa.* to have control of it against Co-security. 442. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, any security, who may be sued, together with other securities, shall pay or discharge any execution or executions issued against principal or co-securities, shall after an entry is made on the said executions by the collecting officer, that the same has been well and truly paid by said security, then and in such cases, the said security so paying or discharging said execution [*shall have the control thereof*] against each co-security who may have been made a party to said suit, for the proportionable part, equitably due by each, and no more; [*see 446:*] *Provided nevertheless*, that all should be equally responsible, if not, then to be equally divided or paid by those who are.

Two Securities to hold jointly. 443. SEC. II. Any execution so paid or satisfied by two or more securities, shall be held as the joint property of said securities against all the parties equally concerned for their proportionable part.

*Fi. fa.* to be delivered to Security. 444. SEC. III. After payment and entry made, as herein prescribed, it shall be the duty of the officer making the entry to deliver said execution to the security who shall have made the payment, to be used and controlled as herein mentioned.

SEC. IV. All laws and parts of laws militating against this law, be and the same are hereby repealed.

AN ACT to explain and amend the first section of an act approved twentieth December, eighteen hundred and twenty-six, entitled “an act to define the liability of Securities on Appeal; on Stay of Executions, and for the protection of Bail on Recognizance, Bond, Note, or other Contract.” And also, to explain and amend the first section of an act approved December twenty-sixth, eighteen hundred and thirty-one, entitled “an act to alter and amend an act, entitled an act to define the liability of Securities on Appeal; on Stay of Executions, and for the protection of Bail on Recognizance, Bond, Note, or other Contract.”—*Approved December 27, 1845.*

Security paying off *fi. fa.* to have control of it. 445. *Be it enacted*, That from and immediately after the passage of this act, it shall and may be lawful for any person or persons who have heretofore become security on any note, bond or other instrument in writing, and not interested in the consideration, and judgment has been rendered against them, and such security or securities have been heretofore compelled



led to pay off such judgment, or may hereafter be compelled to pay off such judgment, he, she or they shall be entitled to the control of the same, and be permitted to use and control the same, in as full and ample a manner as the party plaintiff could have done against the principal debtor or debtors: *Provided always*, that it shall be made satisfactorily to appear to the court where such judgment was rendered, that such person or persons, assuming to have the control of any judgment as aforesaid, were *bonâ fide* security or securities only, upon the original bond, note or other instrument, which was the foundation of the judgment: *Provided further*, that this act shall not affect the rights of any *bonâ fide* purchaser, without actual notice of such securityship and judgment, acquired before the passage of the same.

Provided he shows that he was but security.

*Bonâ fide* purchaser protected.

All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to alter, amend and explain the first section of an act passed for the Relief of Co-Securities, assented to 22d December, 1840. And to authorize Constables to levy certain Executions.—*Approved Feb. 8, 1850.*

*Whereas*, great doubt exists whether a Co-Security who has been sued with other securities as such, as also, co-securities who have omitted to sign the original note or contract as security, and also neglected to make special defence at the trial of the same, showing him or themselves security on the original contract; and against whom executions have issued; and who have been compelled to pay off the same, can have control of the same for the purpose of reimbursing him or themselves out of the property of the co-securities:—[See 451.]

446. SEC. I. *For remedy whereof, be it enacted*, That from and immediately after the passage of this act, any security who may have been, or who may hereafter be sued as such, with other co-securities, and against whom execution may have been, or may be issued, and who may have been, or may hereafter be compelled to pay off the same, shall after an entry made by the collecting officer, that the same has been well and truly paid by such security, have control of the execution or executions for the purpose of reimbursing him or themselves proportionably, out of the property of the co-security or securities.

Security to have control of *fi. fa.* against Co-security.

447. SEC. II. Any security who may have been, or may be sued together with other securities, and who have omitted or may omit to sign the original note or other contract, as security; and who when sued, have neglected or may neglect to make special defence at the trial, showing himself or themselves security on the original contract; and against whom execution has issued or may issue; and who have been or may be compelled to pay off the same, shall upon showing to the court from whence said execution or executions issued, that he or they were *bonâ fide* security or securities on the original contract, and not interested in the original consideration, have an entry by the court, that he or they are security or securities, on the execution or executions, and after which and upon having an entry made by the collecting officer, on the execution or executions, that the same has been well and truly paid by said security or securities, then and in such cases, said security or securities so paying off and discharging said execution or executions, shall have control of the same for the purpose of collecting by levy and sale, from each co-security so sued together, or such as may be responsible, the proportionable share due by each, upon such execution or executions: *Provided nevertheless*, that if any should not be responsible, then the amount so paid on said execution or

Security neglecting to make Special Defence may show that fact and have control of *fi. fa.*

Security paying off *fi. fa.* to have control so as to collect *pro rata* from responsible Co-security.



executions by such security, is to be equally divided between those securities who are.

Constable  
may levy Execution against  
Sheriff.

448. SEC. III. That in all cases where any sheriff may be a defendant in execution, it shall be lawful for the plaintiff to place his execution in the hands of any constable of the county, who shall be and he is hereby authorized to levy and sell, as the coroner or sheriff of an adjoining county is authorized to do in such cases.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Entry by Collecting-Officer.*

Received, *May 1, 1859*, the whole amount of this Execution, principal, interest and cost, amounting to *five hundred dollars* of *John Doe*, one of the Securities; and the control given to him, according to law.

MADISON MARSHALL, *Sheriff.*

### *Order of the Court.*

JOHN DOE	}	<i>Fi. Fa.</i> from <i>Houston Superior Court</i> , returnable
<i>vs.</i>		to <i>October Term, 1858.</i>
RICHARD ROE,		Principal debt, \$500 00.
CHARLES SMITH		Interest, \$50 00.
<i>and</i>		Costs, \$17 00.
JAMES WILLIS.		

It appearing to the Court here, that *Charles Smith* and *James Willis*, were *bona fide* securities on the *Note*, the foundation of the Plaintiff's demand, and in no way interested in the consideration thereof. And it appearing that said *Charles Smith* has been compelled to pay off said *fi. fa.* It is ordered, that said *Charles Smith* have the control of said *fi. fa.* for the purpose of collecting by levy and sale, from said *James Willis*, the proportionable share due by said *James Willis* on said *fi. fa.* This *October 25, 1859.*

JAMES A. PRINGLE,

*Att'y pro Charles Smith.*

AN ACT to amend an act entitled "an act to alter and amend an act entitled an act to define the liability of Securities on Appeals, &c.—*Approved Dec. 26th, 1831.*"—*Approved Feb. 23d, 1850.*

Separate  
action against  
Surety; he  
may get con-  
trol.

449. SEC. I. *Be it enacted*, That whenever any person has or shall become surety on any note, bond or other contract, and fails to sign his name as such, and separate actions are brought against such surety and his principal, and the surety shall or may pay off the judgment rendered against himself, and shall make it appear to the court in which the judgment was obtained, that he was only a surety on such bond, note, &c., and not interested in the consideration thereof; that then and in that event, he shall be entitled to the control of the judgment against his principal, for the purpose of remunerating himself out of his property.

Surety must  
be designated  
as such.

450. SEC. II. When any surety shall or may sign his name as such, to any bond, note or other contract, and separate suits are brought against him and his principal, that he shall be sued as surety, and as such, mesne and final process shall go against him; and on his paying off the judgment obtained against himself, he shall have control of the execution against his principal for his reimbursement.

451. SEC. III. Where there are two or more sureties to any note, bond

or other written contract, and such sureties are or may be sued in separate actions, the surety paying off the debts shall have the control of the executions obtained against his co-securities, for the purpose of collecting out of them their *pro rata* part of the debt. And if such surety should fail to sign his name as such, then on his making it appear to the court in which such suit was brought, that he was only a surety, and not interested in the consideration of the debt, he shall have the control of the executions issued against his co-securities, to the same extent and for the same purpose as is provided in the foregoing part of this section.

452. SEC. IV. If separate suits are, or hereafter may, be brought in any of the courts of this State, against the maker and endorsers of any promissory note, and the debt is or may be collected of one of said endorsers, in that event such endorser, for his reimbursement, shall have the control of the execution issued against the maker of the note, as well also as of the execution obtained against any of the prior endorsers.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Surety against Principal.*

JOHN DOE	}	<i>Fi. Fa.</i> from <i>Houston Superior Court</i> , returnable
<i>vs.</i>		to <i>October Term</i> , 1859.
RICHARD ROE.		Principal debt, \$500 00.
JOHN DOE		Interest, \$500 00.
<i>vs.</i>		Costs, \$15 00.

CHARLES SMITH. It appearing to the Court here, that *Charles Smith* was security on the *Note*, the foundation of the above *fi. fas.*, and in no way interested in the consideration of said *Note*. That separate actions were brought on said *Note* against said *Richard Roe*, and said *Charles Smith*. That the *fi. fa.* against said *Charles Smith* has been paid off and discharged by said *Charles Smith*. It is therefore hereby ordered, that said *Charles Smith* have the control of the judgment rendered against said *Richard Roe*, and the execution issued therefrom, in said cause for the purpose of remunerating himself out of his property.

JAMES A. PRINGLE,  
*Attorney pro Charles Smith.*

### *Surety against Co-Security.*

It appearing to the Court here, that *Richard Roe* and *Charles Smith* were Co-Securities on the *Note*, the foundation of the Plaintiff's demand, and in no way interested in the consideration of said *Note*. That separate actions were brought against said Co-Securities. That *Richard Roe*, one of said Co-Securities, has paid off the said debt. It is therefore, hereby ordered, that said *Richard Roe* have the control of the Execution obtained in said cause, against said *Charles Smith*, for the purpose of collecting out of him his *pro rata* part of said debt.

AN ACT to give Endorsers the control of *fi. fas.* in all cases in which they may have paid them, against the principal or any prior Endorser.—*Approved March 1, 1856.*

453. SEC. I. *Be it enacted, &c.*, That hereafter in all cases in which the principal or endorser or endorsers, may be sued in the same action, or in

Sureties sued separately, control of *fi. fa.* given to one paying off the debt.

Endorser to have control against Maker and prior Endorsers.

Endorsers how reimbursed.



which they may be sued in separate actions, and in which judgment may be obtained; and where any one of said endorsers may or shall pay off the *fi. fa.*; in any such case, the endorser so paying off the *fi. fa.* shall have the control of the *fi. fa.* or *fi. fas.* in any or either of the cases above-stated, for the purpose of remunerating himself out of the property of the principal or either of the prior endorsers. And where any subsequent endorser has collected the money out of any prior endorser, the prior endorser shall have the control of the *fi. fa.* in any of the cases above enumerated, to reimburse himself out of the principal, or any prior endorser to him.

SEC. II. [Repeals conflicting laws.]

AN ACT to authorize the issuing of Alias Executions, in vacation, by the several Courts of Law within this State, when the originals have been lost.—*Approved Dec. 22, 1857.*

Judge may order Alias Executions to issue in vacation. 454. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any execution, which shall have been regularly issued, out of any of the courts of this State, shall be lost, it shall and may be lawful for the judges of any of said courts, at any time in vacation, upon proper application being made, to grant orders for the issuing of alias executions, in all cases in which they may be required; upon the same terms and with the same restrictions, as are now prescribed for the issuing of the same in term-time.

Extended to City-Courts. 455. SEC. II. That the provisions of this act, shall also extend to the different city-courts of this State.

SEC. III. [Repeals conflicting laws.]

AN ACT for the relief of Sureties, Endorsers and Guarantors, in certain cases therein mentioned.—*Approved Dec. 21, 1857.*

Payment by Surety, etc., pending suit, suit to proceed for the benefit of Surety. 456. SEC. I. *Be it enacted*, That when any surety, endorser or guarantor, in any action against the principal or principals, and such surety, endorser or guarantor, shall pay the amount due to the plaintiff, pending such action, such payment shall not operate as, or be plead by the principal or principals, in bar of said action, but the said action may be continued in court, notwithstanding such payment, and be prosecuted to final judgment against the principal or principals, in the name of the plaintiff for the use of such surety, endorser or guarantor.

Payment by subsequent Endorser, gives control of the case against prior Endorser, and Principal. 457. SEC. II. That in all cases of payment by an endorser or guarantor, pending the action, as provided in the foregoing section, where there are prior endorsers or guarantors, joined as parties defendants, said endorser or guarantor shall be entitled to prosecute the action to judgment, and control the same, when recorded, against such prior endorsers or guarantors, as well as against the principal or principals, as provided in the foregoing section.

Surety paying pending action, to have control of case against co-sureties. 458. SEC. III. That in all cases of payment by a surety, pending an action, where co-sureties are joined as parties defendants, such surety shall be entitled to prosecute the same to judgment; and control said judgment, when recovered [*recorded*] against his said co-sureties, for their proportionable liability, of the debt or contract on which said judgment may be recovered, and of the costs of the action.

Surety, etc., paying off Execution, returned "no property," subrogated to all the rights of Plaintiff. 459. SEC. IV. That where any surety, endorser or guarantor, shall pay off and discharge any execution against the property of principal and surety, or principal endorser or guarantor, in such case, upon the return of said execution to office, with the return of "no property," by the levying-officer, such person so paying off the same, shall be subrogated to all the rights of the plaintiff.

AN ACT relative to the issuing of Executions.—*Approved Dec. 11, 1858.*

460. SEC. I. *Be it enacted*, that in all cases, after obtaining a verdict and

entering up judgment, plaintiffs may obtain, from the proper officer, executions on said judgments, upon application for the same. But if the same is obtained before the expiration of the time allowed for appealing from said verdict, the same may be superseded, by the defendant in *fi. fa.* entering his appeal from said verdict, on the usual terms and conditions. *Fi. Fa.* may issue upon application; but it may be superseded.

## EXECUTORS AND ADMINISTRATORS.

461. SEC. XII. No suit or action shall be issued against any executor or administrator for any matter or cause against the testator or intestate of such executor or administrator, in any of the said courts, until the expiration of twelve months after probate of the will of such testator, or letters of administration, granted on the estate of such intestate. 12 months allowed Executor and Administrator.

462. And no suit in any of the said courts, shall abate by the death of either party, where such cause of action would in any case, survive to the executor or administrator, whether such cause of action would survive in the same or any other form; but the same shall proceed as if such testator or intestate had not died, under the restrictions and regulations following— When a plaintiff shall die, in any case aforesaid, the executor or administrator of such plaintiff, shall within three months after taking out probate of the will, or letters of administration, give notice to the defendant or defendants by *Scire Facias* to issue out of the clerk's office, returnable in the manner herein-before prescribed for the issuing and return of process. And in cases where the defendant shall die, it shall and may be lawful for the plaintiff to issue a *Scire Facias*, in manner aforesaid, immediately after the expiration of twelve months, requiring such executor or administrator to appear and answer to the said cause. Suits not to abate. *Scire Facias* may issue. Defend't must appear.

463. And where a *feme sole* being plaintiff shall marry pending any suit, the same shall not abate by reason of such intermarriage, but the same being suggested on the record, such cause shall proceed in the name of the husband and wife. *Feme sole* marrying, suit not to abate.

### *Marriage of Feme Sole Plaintiff.*

JANE CLIFTON }  
vs. } *Assumpsit*, etc., October Term, 1859.  
JOHN DOE. }

It appearing to the Court here, that the Plaintiff, *Feme Sole* at the commencement of the above Action, has intermarried with *Richard Roe*, it is therefore, ordered that said Action proceed in the name of the husband and wife.

## ATTORNEY AND SOLICITOR-GENERAL.

464. SEC. XXXVII. It shall be the duty of the States' attorney and solicitors, or one of them, to prosecute all delinquents for crimes and other offences, cognizable by the said courts; and all civil actions in which the State shall be concerned; and to give advice or opinion in writing, to his excellency the governor, in questions of law in which the State may be interested. And in case it should so happen that neither the States' attorney or solicitors, or either of them, can attend the said courts, then the judge Duty of Attorney and Solicitors General. When absent Court may appoint *pro. tem.*



presiding, may and he is hereby authorized and required, to appoint some attorney-at-law, to prepare and prosecute the indictments and other business of the State; and such person so appointed, shall be entitled to the same fees and emoluments therein, as the States' attorney or solicitors would have been entitled to.

AN ACT pointing out the mode of compelling the Attorney-General and the Solicitors-General of this State to pay over Moneys collected by them for the State.—*Approved Dec. 23, 1826.*

Attorney and  
Sol. Gen. may  
be ruled.

465. From and after the passage of this act, the attorney-general and the solicitors-general of this State, shall be subject to a rule of court to compel them to pay over moneys collected by them for the State, under the same rules and regulations as govern attorneys and counsellors-at-law, when they neglect or refuse to pay over moneys collected for their clients.

Who may  
prosecute  
rule.

466. SEC. II. Any practising attorney-at-law, when employed for that purpose by the governor, treasurer or comptroller-general, shall be fully competent to prosecute such rule against any defaulting attorney or solicitor-general. Any law, usage or custom to the contrary notwithstanding.

Defaulters  
may be im-  
prisoned.

467. SEC. III. The judges of the superior courts shall have power to imprison, as for a contempt, such defaulting solicitor or attorney-general; and during such imprisonment said courts shall have power to appoint temporarily, some attorney to execute the duties of such delinquent solicitor or attorney-general.

AN ACT to compel the Attorney and Solicitors-General of this State, to give Bond and Security for the faithful discharge of the duties of their respective Offices. And to further define the duties of the Comptroller-General, the Attorney and Solicitors-General.—*Approved Dec. 20, 1828.*

Attorney and  
Sols. Gen. to  
give Bond and  
Security.

468. From and after the passage of this act, it shall be the duty of the attorney and solicitors-general of this State, and they are hereby required, before they are qualified and enter upon the duties of their respective offices, to give bond and security to the governor for the time being, and his successors in office, which shall be judged of and approved by him, in the sum of \$20,000; which said bond shall be conditioned to pay over to the comptroller-general of the State, all moneys collected as attorney-general or solicitors of their several circuits, or otherwise, in behalf of the State, to which the State may be entitled; also, the amount of all sums incurred by said attorney and solicitors-general, by reason of failure to pay over the same according to the act of 1823; and do and perform all other duties required of them by law. Which said bond shall be filed in the comptroller-general's office, subject to the order of the legislature.

Conditions of  
the Bond.

Where filed.

Attorney and  
Sols. Gen.  
must make  
An. Reports.

469. SEC. II. It shall be the duty of the attorney-general and solicitors-general to make an annual report of the state and standing of the claims in favor of the State, under their control, to the comptroller-general, at the commencement of the session of the legislature, showing what suits are instituted, and when instituted, and what money may have been collected during the preceding year; also, on what cases collected.

Comp. Gen.  
must report to  
Legislature.

470. SEC. III. It shall be the duty of the comptroller-general to report to the legislature at its annual session, all arrears or neglect of duty by the attorney-general, or either of the solicitors-general. Any law to the contrary notwithstanding.

### *Solicitor-General's Bond.*

STATE OF GEORGIA, ) We, *Charles Smith*, as principal, and *John Doe*  
Baldwin County. } and *Richard Roe* as securities, all of the County  
aforesaid, acknowledge ourselves held and bound to his Excellency

*Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of twenty thousand dollars, subject to the following condition—

The condition of the above obligation is this—whereas, the above bound *Charles Smith* has been *elected* Solicitor-General of the *Ocmulgee* District in said State: now, should the said *Charles Smith*, well and truly pay over to the Comptroller-General of said State, all Moneys collected by him as Solicitor-General of said District, or which may otherwise come into his hands, in behalf of said State, to which the State may be entitled. Also, the amount of all sums incurred by said *Charles Smith*, by reason of failure to pay over the same, according to the act of 1823. And do and perform all other duties required of him by law, then the above obligation to be void; otherwise, of force. This *May 1*, 1859.

Approved—

JOSEPH E. BROWN, *Governor*.

CHARLES SMITH, *prin'l.* [L.S.]

JOHN DOE, *sec'ty.* [L. S.]

RICHARD ROE, *sec'ty.* [L. S.]

AN ACT to make residence in the Judicial District a necessary qualification of the State's Attorney and Solicitors-General of this State.—*Approved Jan. 17*, 1850.

471. SEC. I. *Be it enacted*, That from and after the passage of this act, no person shall be eligible to the office of State's Attorney or Solicitor-General in any Judicial Circuit in this State, who has not been a resident of the District for one year immediately preceding the time of the election. Solicitor General must reside in District.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the Government of Solicitors-General in certain cases therein named, and to provide for the payment of the Fees of Witnesses.—*Approved Feb. 16*, 1854.

472. SEC. I. *Be it enacted*, That no *Nolle Prosequi*, or entry of settlement, in any criminal cause in the superior court, shall hereafter be consented to by the State's attorney or solicitors-general, where the prosecutor and defendant have agreed to settle; or where the State's attorney shall agree to a *Nolle Prosequi*, until all costs due to all the officers of court, and witnesses' fees, whether the witnesses have been sworn or not, shall be paid. And in all cases where the defendant pleads guilty upon an indictment or prosecution, he shall be liable in law for witnesses' fees, as though the witnesses had been sworn. No nolle prosequi until costs and Fees are paid.

473. SEC. II. That it shall hereafter be the duty of the State's attorney and the several solicitors-general in this State, to settle with the county treasurer of each county within their respective circuits, at the fall term of the superior court of each county; and to render in a just and true return of all moneys which may have come into their hands during said year, belonging to said county; and to pay over to said treasurer all moneys which may be found in the said solicitor-general's hands, belonging to said county, after a just and fair settlement. Solicitor General must account annually with the County Treasurer.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to fix the time of holding Elections for Judges of the Superior Courts, Attorney-General and Solicitors-General.—*Approved March 1*, 1856.



Election of Judges, Attor-  
ney-Gener-  
al and Solic-  
itors-General. 475. SEC. I. *Be it enacted*, That from and after the passage of this act, the regular elections of Judges of the Superior Courts, Attorney-General and Solicitors-General, shall be held on the first Monday in January.

SEC. II. [Repeals conflicting laws.]

AN ACT to elect the Attorney-General for the Middle Circuit, and the Solicitors-General for the respective Judicial Circuits of this State, by the people; and for other purposes therein named.—*Approved March 5, 1856.*

Att'ney-Gen-  
eral and Solic-  
itors - General  
to be elected  
by the people. 476. SEC. I. *Be it enacted*, That the attorney-general for the Middle circuit, and the solicitors-general for the several judicial circuits of this State, shall be elected by the people of the respective circuits entitled to vote for governor, members to congress and members to the legislature, under the same rules and regulations governing said elections.

When to be  
Elected, and  
how Commis-  
sioned. 477. SEC. II. That said elections are to take place on the days of general elections, to wit: on the first Mondays in January, immediately preceding the expiration of the term of office of the present incumbents, respectively. And said attorney-general and solicitors-general so elected, shall be commissioned by the governor, and hold their office for the space of four years from the date of said commissions.

Vacancy how  
filled. 478. SEC. III. That should any vacancy occur, it shall be the duty of his excellency the governor, to fill such vacancy by appointment, until the first Monday in January next after making said appointments. That his excellency shall issue his proclamation, and publish the same at least thirty days preceding said election. And the attorney and solicitors-general elected according to the provisions of this section, shall hold their office for the unexpired term only.

SEC. IV. [Repeals conflicting laws.]

AN ACT to authorize the settlement of Criminal Prosecutions, in certain cases. And to regulate, more particularly, the duties of the Attorney and Solicitors-General, and fix their liabilities.—*Approved Feb. 22, 1850.*

Minor offences  
may be settled. 479. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful, in all criminal offences against the person or property of a citizen, not punishable by fine and imprisonment, or by a more severe penalty, for the offender to settle the case with the prosecutor, upon the consent of the injured party being obtained, at any time before verdict.

Amount of  
Cost. 480. SEC. II. Upon such settlement made, no more cost shall be required than has accrued up to the time of such settlement.

Other cases  
may be settled  
by consent of  
Court and  
Prosecutor. 481. SEC. III. Upon bill found by a grand-jury, for any offence not embraced in the provisions of the first section of this act, the case shall not be settled without the consent of the prosecutor shown to the court; nor without the consent of the court, by order entered on the minutes.

Attorney or  
Solicitor-Gen-  
eral demand-  
ing Fees in  
advance pun-  
ishable. 482. SEC. IV. Any attorney or solicitor-general who shall demand or receive any fee or cost, on any criminal case which has not been tried by a petit jury, except such as are provided for in the first section of this act, shall be guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, at the discretion of the court.

## SPECIAL POWERS OF SUPERIOR COURTS.

483. SEC. LIII. The Superior Courts in the several counties, shall exercise the powers of a Court of Equity in all cases where a common law remedy is not adequate to compel parties in any cause to discover on oath, all requisite points necessary to the investigation of truth and justice; to discover transactions between co-partners and co-executors; to compel distribution of intestate estates, and payment of legacies; to discover fraudulent transactions, for the benefit of creditors. And the proceedings in all such cases, shall be by bill, and such other proceedings as are usual in such cases, until the setting down of the cause for trial. And the courts shall order the proceedings in such manner as that the same shall be ready for trial at furthest, at the third term from the filing such bill, inclusive, [see 510,] unless very special cause be shown to induce the court to continue the same, which shall not extend to more than four terms. [And all such bills shall be read and sanctioned by one of the judges—see 484] and a copy thereof served on the opposite party, at least thirty days before the filing of such bill in court, [see 509.] And the party against whom such bill shall be filed, shall appear and answer to the same, at the next court, (see 510,) and if he, she or they, shall fail to do so, the facts in the said bill shall be taken *pro confesso*, and the court may proceed to decree, as to justice shall appertain.

Equity powers and proceedings.

Proceedings to be by Bill. When case for trial.

Bill how and when served.

Answer.

Bill taken *Pro Confesso*.

## EQUITY FORMS.

*Commencement and Conclusion of a Bill.*

STATE OF GEORGIA, } To the Superior Court of said County, exercising  
Houston County. } Jurisdiction in Equity, in and for said County.

Respectfully complaining, sheweth unto your honor, your Orator, (or Oratrix,) *John Doe* of said State and County, That [here state the charges, fully, particularly, and at length.]

*Conclusion.*—May it please your honor to grant unto your Orator, (or Oratrix,) the States' writ of Subpœna, to be directed to the said *Richard Roe*, thereby commanding him, at a certain day and under a certain pain therein to be limited and expressed, personally to be and appear before the Superior Court, to be held in and for said County on the fourth Monday in *October* next, and then and there, full, true, direct and perfect Answer make, to all and singular the premises. And further, to stand to, perform and abide such further order, Direction and Decree therein, as to said Court shall seem meet and proper. And your Orator (or Oratrix,) shall ever pray, etc.

JOHN M. GILES, *Compl't's Sol'r.*

*Writ of Subpœna.*

STATE OF GEORGIA, } To *Richard Roe*, of said County—Greeting.  
Houston County. } For certain causes to us made known, by the Bill of Complaint of *John Doe*, for *Discovery and Relief*, filed in the Clerk's office of the Superior Court of said County, on the Chancery side of said Court; in which said *John Doe* is complainant and you, the said *Richard Roe*, are defendant, we command and strictly enjoin you, that laying all business aside, and notwithstanding any excuse you



have, that you be and appear before us, at our Superior Court, to be held in and for said County, on the *fourth* Monday in *October* next, to Answer to all such matters and things as may, then and there, be objected against you. And to stand to and abide the further Order and Decree, then and there to be made in the premises.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this June 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

*Demurrer.*

JOHN DOE	}	Bill, etc. in <i>Houston</i> Superior Court. Demurrer of the Defendant.
<i>vs.</i> RICHARD ROE.		

The Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's said Bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth Demur to said Bill, and for cause of Demurrer shows, [*here set out the grounds of Demurrer.*] Wherefore, and for divers other good causes of Demurrer appearing in said Bill, this Defendant doth Demur thereto, and prays the judgment of the Court, whether he shall be compelled to make any further and other Answer to the Bill. And he prays to be dismissed from hence, with his reasonable costs, in this behalf sustained.

JAMES A. PRINGLE, *Def't's Sol'r.*

*Plea.*

JOHN DOE	}	Bill, etc. in <i>Houston</i> Superior Court. Plea of the Defendant.
<i>vs.</i> RICHARD ROE.		

The Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's said Bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth Plead thereunto, and for Plea saith, that [*here set out the grounds of the Plea.*] All which matters and things the Defendant doth aver to be true, and Pleads the same to the *whole* of the said Bill; and humbly demands the judgment of the Court, whether he ought to make any Answer to the said Bill of Complaint, and prays to be hence dismissed with his reasonable costs, in this behalf, most wrongfully sustained.

JAMES A. PRINGLE, *Def't's Sol'r.*

*Disclaimer.*

JOHN DOE	}	Bill, etc. in <i>Houston</i> Superior Court. The Disclaimer of the Defendant.
<i>vs.</i> RICHARD ROE.		

The defendant saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception that may be had and taken to the many uncertainties, insufficiencies and imperfections in the said Complainant's said Bill of Complaint contained, for a full and perfect Answer thereto, or to such part of it as it materially

concerns this Defendant to make Answer unto, he answereth and saith, that [*here set out the grounds of Disclaimer.*] And this Defendant doth deny all manner of unlawful combination and confederacy, unjustly charged against him in and by the said Complainant's said Bill of Complaint, material or necessary for this Defendant to Answer unto, confessed or avoided, traversed or denied, is true. All which matters and things this Defendant is ready to aver, maintain and prove, as the Court shall award; and prays to be hence dismissed with his reasonable costs and charges, in this behalf, most wrongfully sustained.

JAMES A. PRINGLE, *Def't's Sol'r.*

### *Commencement and conclusion of an Answer.*

STATE OF GEORGIA, } The Answer of *Richard Roe*, Defendant, to the  
Houston County. } Bill of Complaint of *John Doe*, Complainant.

This Defendant, now and at all times hereafter, reserving unto himself, all benefit and advantage of exception which can or may be had or taken, to the many errors, uncertainties and other imperfections in the said Complainant's said Bill of Complaint contained, for Answer thereunto, or unto so much and such parts thereof, as this Defendant is advised is or are material or necessary for him to make Answer unto, this Defendant answering saith, that [*the Defendant, must Answer according to his knowledge, remembrance, information and belief, every material fact in the Bill.*]

*Conclusion.*—And this Defendant denies all and all manner of unlawful combination and confederacy, wherewith he is, by the said Bill, charged; without this, that there is any other matter, cause or thing, in the said Complainant's said Bill of Complaint contained, material or necessary for this Defendant to make Answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of this Defendant. All which matters and things this Defendant is ready and willing to aver, maintain and prove, as the Court shall direct; and prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

JAMES A. PRINGLE, *Def't's Sol'r.*

### *Oath of the Defendant to his Answer.*

"You, A B, do solemnly swear, (or solemnly, sincerely and truly declare and affirm, as the case may be,) that what is contained in your Answer, as far as concerns your own act or deed, is true of your own knowledge; and that which relates to the act or deed of any other persons, you believe to be true."

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.*

RICHARD ROE.

AN ACT to repeal a part of an act entitled "an act to revive [*revise*] and amend the Judiciary System of this State, passed on the 16th day of Feb., 1799.—*Approved Dec. 24*, 1827.

484. So much of the said above-recited act as requires the judges of the



Bills that must be read and sanctioned. superior courts, or one of them, to read and sanction bills in equity, other than bills of injunction, *ne exeat*, and *quia timet*, before the filing of said bills in court, shall be and the same are hereby repealed.

AN ACT to authorize the Judges of the Superior Courts of this State, to appoint Receivers during vacation. And to require the Complainant, in all cases, asking for writs of *Ne Exeat*, *Quia Timet*, and all applications asking for the appointment of a Receiver, or for Injunction, to give Bond and Security to the Respondent, for any loss or damage which he or they may sustain by the suing out of said Writs. And for other purposes.—*Approved March 4, 1856.*

Receiver may be appointed in vacation. 485. SEC. I. *Be it enacted*, That from and after the passage of this act, the judges of the superior courts, in this State, shall have power and authority to appoint receivers, in vacation, upon such a case made as will now, by law, authorize the appointing of the same, in term-time.

Bond must be given by the Complainant. 486. SEC. II. That before any writ of injunction, *ne exeat*, *quia timet*, or any writ appointing a receiver, shall hereafter be issued by the judges of the superior courts of this State, or by the court, the complainant shall give bond and security to the respondent, fully to respond to any damage which the respondent may sustain, by reason of the issuing of said writs, or the appointment of the said receiver.—[*See 487.*]

### Complainant's Bond.

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe* as  
Houston County. } security, both of the County and State aforesaid,  
acknowledge ourselves held and bound to *Charles Smith*, of the County and State aforesaid, in the sum of *one thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows:—Whereas, said *John Doe* has filed his Bill of Complaint, against said *Charles Smith*, in the Clerk's Office of the Superior Court of said County, returnable to the *October* Term of said Court, next ensuing. In which Bill of Complaint said *John Doe* prays the issuing of the States' Writ of *Injunction*: now, should the said *John Doe*, fully respond to any damage which the said *Charles Smith* may sustain, by reason of the issuing of the said Writ of *Injunction*, then this above obligation to be void; otherwise of force. This *May 1, 1859.*

Attest—  
*James Mack, J. P.*

*JOHN DOE, princ'al.* [L. S.]  
*RICHARD ROE, sec'ty.* [L. S.]

AN ACT to amend an act entitled “an act to authorize the Judges of the Superior Courts of this State, to appoint Receivers, during vacation. And to require the Complainant, in all cases asking for Writs of *Ne Exeat*, *Quia Timet*, and all applications asking for the appointment of a Receiver, or for Injunction, to give Bond and Security to the Respondent, for any loss or damage which he or they may sustain by the suing out of said Writs; and for other purposes,” approved March 4th, 1856; so as to allow the issuing any of the aforesaid Writs, upon the applicant making oath, that from his poverty, he is unable to give such Bond and Security.—*Approved Dec. 22, 1857.*

Writs to issue where Complain't makes affidavit of his inability. 487. SEC. I. That said act be so amended that any of the writs therein mentioned, shall issue upon complainant attaching to his bill an affidavit, that he is advised and believes that he has a good and legal cause of action,

and that from his poverty, he is unable to give the bond and security required by such act.

SEC. II. [Repeals conflicting laws.]

### *Affidavit of Complainant.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *John Doe*, Complainant in the foregoing Bill, who  
being sworn saith, that from his poverty, he is unable to give the Bond  
and Security, required in cases of *Injunction*, and therefore prays, the  
issuing of the State's Writ of *Injunction*, without Bond and Security.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }

*James Mack, J. P.*

JOHN DOE.

### *Sanction of the Judge.*

IN CHAMBERS, *May 1*, 1859.

STATE OF GEORGIA, } To the Clerk of the Superior Court of Houston  
Bibb County. } County.

Read and sanctioned.—Let the State's Writ of *Injunction* issue;  
directed to the Defendant, his Confederates, Servants and Agents, each  
in the sum of *ten thousand* dollars, according to the prayer of the Bill.  
And let such other proceedings, as are usual and necessary, in Equity,  
be had.

*Witness my hand and official signature.*

HENRY G. LAMAR, J. S. C. M. C.

### *Writ of Injunction.*

STATE OF GEORGIA, } To *Richard Roe*, his Confederates, Servants and  
Houston County. } Agents.—Whereas, *John Doe* has preferred his  
Bill of Complaint, against you, returnable to the *October* Term, eight-  
teen hundred and *fifty-nine*, of the Superior Court of said County,  
showing that [*here state briefly but accurately, the substance of the Bill.*]  
And whereas, the said *John Doe*, by his said Bill, prays the issuing of  
the State's Writ of *Injunction*, to be, forthwith, issued, to stay [*here  
state the object of the Injunction.*] And the said *John Doe*, having verified  
the facts and statements of said Bill, on oath. And said Bill having  
been read and sanctioned by the Judge of said Court; therefore, you,  
the said *Richard Roe*, and all and every, the persons before mentioned,  
are hereby commanded and strictly enjoined, that you and every of  
you, do from henceforth, altogether and absolutely desist from [*here  
state the object of the Injunction,*] until said Superior Court shall make  
further Order to the contrary.

To the Sheriff of the County of Houston.—You are hereby commanded  
to give notice hereof to the said *Richard Roe*, and all the persons before  
mentioned, by leaving a true and attested copy of the foregoing Writ,  
with the said *Richard Roe*, and the other persons above mentioned;  
and by requiring the said *Richard Roe*, and other persons, each, to enter  
into Bond, payable to said *John Doe*, with good security, in the sum  
of *ten thousand* dollars, to observe and abide by the conditions and  
requirements of the forgoing Order. Fail not, &c., and make return



of this Writ to the Superior Court, to be held in and for said County, on the *fourth* Monday in *October* next.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 2, 1859.

WILLIAM H. MILLER, Clerk.

### *Writ of Ne Exeat.*

STATE OF GEORGIA, } To the Sheriff of said County—Greeting :  
Houston County. } Whereas, *John Doe* has filed his Bill of Complaint, against *Richard Roe*, of said County, in the Superior Court of said County, returnable to the *October* Term of said Court; which Bill is verified by the oath of said *John Doe*; and which Bill has been read and sanctioned by the Judge of said Court. In which Bill it is made known, that [*here state briefly, but accurately, the substance of the Bill.*] And whereas, said *John Doe*, by his said Bill, prays the issuing of the State's Writ of *Ne Exeat*, directed to said *Richard Roe*, commanding and requiring him, *not to remove beyond the jurisdictional limits of said Court*; therefore, you the said Sheriff, are hereby commanded, in the name of the State of Georgia, to arrest him, the said *Richard Roe*, and he being arrested, safely and securely to keep, in your custody, until he shall enter into Bond with good and ample security, in the said County of *Houston*, in the sum of *one thousand* dollars, payable to the said *John Doe*, conditioned that the said *Richard Roe* will not remove beyond the jurisdictional limits of the Superior Court of the County of *Houston*, without the Order and permission of said Court. And in case of the neglect or refusal of the said *Richard Roe*, to enter into the said Bond and security, as aforesaid, you are hereby commanded and authorized, to confine the said *Richard Roe*, in the common jail of said County of *Houston*, or some other secure place, there to remain, without bail or mainprize, until the further Order of the said Court, in the premises. And you are further commanded to give notice hereof, to the said *Richard Roe*, by serving on him personally, a true and attested copy of the foregoing Writ. Fail not, &c., and make return of this Writ, to the Superior Court to be held in and for the County aforesaid, on the *fourth* Monday in *October* next.

Witness, the honorable Henry G. Lamar, Judge of said Court, this May 3, 1859.

WILLIAM H. MILLER, Clerk.

### *Quia Timet.*

STATE OF GEORGIA, }  
Houston County. } Bill Quia Timet, &c.  
JOHN DOE }  
vs. } In Houston Superior Court.  
RICHARD ROE. }

To *John L. Halstead*, Sheriff of said County.

Whereas, the Complainant in the above Bill, (which is verified by the oath of the Complainant,) has presented the same to the honorable *Henry G. Lamar*, Judge of the Superior Courts of the *Macon* Circuit,

by whom said Bill has been read and sanctioned. And whereas, said *John Doe*, in said Bill has prayed the issuing of a *Quia Timet*, in conformity to law, to stay and prevent all the wrongs and injuries, in said Bill, complained of. You are, therefore, hereby commanded, to arrest the body of the said *Richard Roe*, and him safely and securely keep in your custody, until he shall enter into Bond with good security, payable to the Complainant, in the sum of *five thousand* dollars, conditioned that he will not [*here state the object of the Quia Timet.*] And return the said Bond to the Superior Court, to be held in and for said County, on the *fourth* Monday in *October* next, together with this precept, with your actings and doings thereon. Herein fail not.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this *May* 1, 1859.

WILLIAM H. MILLER, *Clerk.*

AN ACT to authorize any one Distributee or person interested in an Estate, to institute proceedings in Equity, without joining as Complainants or making Respondents, other Distributees, residing in the jurisdiction of the Court.—*Approved Dec. 29, 1836.*

488. From and after the passage of this act, it shall and may be lawful for any one distributee or person interested in any estate, to institute his or her bill or other proceeding in equity to compel an account or distribution of an estate, without joining as complainants or making respondents, the other distributees or persons having an interest in said estate, residing within the jurisdiction of the court: *Provided however*, it shall be the duty of such complainant, to state in his or her bill or other equitable proceeding, the names of all the distributees or persons having an interest in said estate, that the court may be enabled to ascertain the amount of the distributive share to which said complainant is entitled, as nearly as practicable.

One Distributee may require Distribution of an Estate.

All parties must be named in the Bill.

AN ACT to regulate the Publication of Rules, Writs, Bills, Orders and Precepts of Court, relative to cases in Equity; to fix the Cost thereof, and to amend certain defects, &c.—*Approved Dec. 29, 1838.*

489. SEC. I. When service of any process, writ, bill, order or rule of court, relating to cases in equity, shall be required to be made by publication in any of the public gazettes of this State, the publication of the same, as aforesaid, once a month for four months, shall be deemed, held and taken to be sufficient; and the clerk shall receive for such publication, the sum of five dollars.

Publication of Equity Precepts how made.

SEC. IV. [Repealing section.]

AN ACT to regulate proceedings in Equity.—*Approved Dec. 23, 1839.*

490. SEC. I. *Be it enacted*, That when a complaining party seeks through a court of equity, the specific performance of an agreement to convey land, and a jury shall find in favor of the complaining party, it shall be the duty of the court to cause the description of the land to be set forth in the judgment of the court, and signed by the attorney of the complainant; which judgment shall be entered on the records of the court, if for land, and shall be recorded in the county where the land lies. Which judgment and decree shall pass the title, without any act to be done by the defendant. And such judgment or decree having been

Decree for Specific Performance what it must contain, etc.

Decree passes Title.



recorded, shall be as effectual to transfer the property as the deed of the defendant: (*Provided*, that the said judgment or judgments shall not affect any person except the party or parties to said bill, further than the deed of the defendants would have done, if executed in pursuance of said decree.) And as decisive of the title as if the complainant had recovered in ejectment. And a writ of possession shall issue, as in case of a recovery in ejectment, when the defendant to the bill is in possession.

AN ACT to amend an act entitled "an act to amend an act entitled an act to revise and amend the Judiciary System of this State." And also to amend an act entitled "an act to alter and amend the sixth section of the Judiciary Act of this State, passed in the year 1799," so far as relates to the Notices provided for in said section. And to prescribe the mode of issuing *Scire Facias* therein provided for.—*Approved Jan. 29, 1850.*

Production of Books, etc., may be required in Equity as at common law. 491. SEC. I. *Be it enacted*, That the provisions of the above-mentioned acts, in relation to producing books, writings, papers, &c. shall extend to causes in equity, in the same manner, in every respect, as they now extend to and embrace any other causes: *Provided*, that nothing herein contained shall be construed to restrain the powers of courts of equity, to effect the same object by other means.

AN ACT declaratory of the law of this State relating to Appeals in the Superior Courts.—*Approved Dec. 27, 1843.*

Appeal in Equity causes the same as at common law. 492. SEC. I. *Be it enacted*, That in all cases hereafter to be tried in the superior courts of this State, on the equity side thereof, either party who may be dissatisfied with the verdict of the jury, may enter an appeal in like manner and under the same limitations and conditions as are prescribed in cases at common law; which appeal shall be tried by a special jury, under the provisions governing common law cases.

AN ACT to authorize the Judges of the Superior Courts to grant Writs of *Ne Exeat* in certain cases therein mentioned.—*Approved Dec. 6, 1813.*

*Whereas*, great evils have existed and do yet exist in this State, in consequence of the law of England regulating writs of *Ne Exeat* not having provided for cases where the demand set forth by the Complainant is not due. *And whereas*, no provision is made for cases of Joint-Obligors, or Joint and several Obligors, when part of them remove or are about removing without the jurisdictional limits of this State, without making satisfaction to the Obligee, or to the other Obligor or Obligors; by reason whereof, the payment of the debt devolves on the Obligor or Obligors who remain within the State, and that too, without the possibility of compelling the Obligors or Obligor removing, to pay or secure the payment of their proportionable part to the Obligee, or the complaining Obligors; for remedy whereof—

Writs of *Ne Exeat* may issue for demands not due. 493. SEC. I. *Be it enacted*, That from and after the passage of this act, the judges of the superior courts shall, and they are hereby authorized, to grant writs of *ne exeat*, as well in cases where the debt or demand is not actually due, but exists fairly and *bonâ fide* in expectancy, at the time of making application, as in cases where the demand is due. And all the proceedings shall be as heretofore practised in this State, in restraining the person and property of the defendant, until he secures to the complainant the payment of the demand, or shows good cause to the court why he should not pay the same. All other proceedings to be in the same way as practised under this writ in other cases.—[*See 498.*]

494. SEC. II. In case of joint or joint and several obligors, if any one or more of them are about to remove without the jurisdictional limits of this State, and are carrying off their property, leaving one or more fellow-obligors bound with them, for the payment of any debt, penalty, or for the delivery of property at a certain time, which time has not arrived at the time of such removal, such obligor or obligors who remain, shall have the benefit of the writ of *ne exeat*, to compel the removing obligor to secure the payment of his part of the debt, penalty, or of the delivery of the property. And also, in cases of security, the security shall have all the benefit of the writ of *ne exeat* against his principal or fellow-security, where the obligation or debt is not yet due, and the principal or either of the securities are about removing without the State: *Provided nevertheless*, that in all cases arising under this act, the party complaining shall pursue the legal form and course of law, as heretofore practised in this State. Anything herein contained to the contrary notwithstanding.

Joint-Obligor may have *Ne Exeat* against Fellow-Obligor.

Security may have the like remedy.

AN ACT to authorize the several Courts of Equity in this State, to grant remedies in certain cases. And to regulate the Courts of Law and Equity in this State, &c.—*Approved Nov. 23, 1814.*

495. SEC. I. Where any person or persons has or shall run out of this State, the property of a deceased person or persons, to the injury of the orphans of said deceased; or to the injury of the next of kin, entitled to the same, it shall and may be lawful for the judges of the several courts of equity in this State, upon application and the facts being stated, on oath made to the truth thereof; and also, the property being described, and its value sworn to, by the person or persons entitled to said estate, his, her or their agent or attorney, to give the party a remedy, either by arresting the defendant, or taking his property, or both, as the court in its discretion, shall deem necessary and proper: *Provided always*, that the judge granting the same, shall take good security of the party, his, her or their agent or attorney, in double the amount sworn to. to make good all costs and damages the defendant shall sustain, if the plaintiff shall discontinue or be cast in said suit.

Judge to give remedy ag't persons running off Orphan's property.

496. SEC. II. The defendant if arrested, and his property also, if taken, shall be discharged and returned to him, on his giving good security to perform the order and decree of the court.

Defendant may give Security.

497. SEC. III. If the defendant fails, or neglects, or refuses to give such security, the court may make such disposition of the property as in its discretion it shall deem most advantageous to the parties on both sides.

If Defendant fails, what may be done.

### *Bond given by the Plaintiff.*

STATE OF GEORGIA, ) We, *John Doe*, as principal, and *Richard Roe*,  
Houston County. ) as security, both of said State and County, acknowledge ourselves held and bound to *Charles Smith*, of the same place, in the sum of *ten thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe*, next friend of *William Jones* and *Jane Jones*, orphans of *John Jones*, deceased, late of said County and State, has filed his *Bill of Complaint* in the Superior Court of said County, against said *Charles Smith*, charging said *Charles Smith* with having run out of this State, certain property in said *Bill of Complaint* described, (valued in said *Bill of Complaint*, at the sum of *five thousand* dollars,) belonging to the Estate of said *John Jones*, and to which said Orphans are entitled:



now, should the said *John Doe* make good all costs and damages the said *Charles Smith* shall sustain in consequence of said proceedings, provided said *John Doe* shall discontinue or be cast in his said suit, then the above obligation to be void; otherwise, of force. This *May* 1, 1859.

Attest—  
*James Mack, J. P.*

JOHN DOE, *principal*, [L. S.]  
RICHARD ROE, *security*, [L. S.]

### *Bond given by the Defendant.*

STATE OF GEORGIA, } We, *Charles Smith*, as principal, and *John Fox*,  
Houston County. } as security, both of the County and State afore-  
said, acknowledge ourselves held and bound to *John Doe*, next friend  
of *William Jones* and *Jane Jones*, Orphans of *John Jones*, deceased, late  
of said County, in the sum of *ten thousand* dollars, subject to the fol-  
lowing condition—

The condition of the above obligation is as follows—whereas, *John Doe*, as the next friend of *William Jones* and *Jane Jones*, Orphans of *John Jones*, deceased, late of said County, has exhibited in the Superior Court of said County, his *Bill of Complaint* against the said *Charles Smith*, charging him with having run out of said State, certain property in said *Bill of Complaint* mentioned, of the value of *five thousand* dollars, belonging to the Estate of said *John Jones*, deceased, and to which said Orphans are entitled. And whereas, said *Charles Smith* has been arrested by virtue of an Order to said *Bill of Complaint* annexed, by the honorable *Henry G. Lamar*, Judge of said Court: now, should the said *Charles Smith*, well and truly, do and perform, the Order and Decree of the Court in the premises, then this obligation to be void; otherwise, of force. This *May* 1, 1859.

Attest—  
*James Mack, J. P.*

CHARLES SMITH, *principal*, [L. S.]  
JOHN FOX, *security*, [L. S.]

AN ACT to prescribe the mode of proceeding under Writs of *Ne Exeat*, and to amend the laws regulating the granting of Writs of Injunction by the judges of the Superior Courts of this State.—*Approved Dec. 22*, 1830.

Defendant in *Ne Exeat* may give Security. 498. In all cases where persons may be hereafter arrested by virtue of writs of *ne exeat*, they shall be discharged on their giving bond with good and sufficient security, either that they will not depart this State, or for the payment of the eventual condemnation money.

Where the Judge is interested, any other Judge may sanction Bills, etc. 499. SEC. II. In all cases in equity, when the judge of any circuit may be a party to such suit; or when the complainant will and shall make an affidavit, that the judge of the circuit where the cause is pending or to be instituted, is interested in the subject-matter of such cause in equity, it shall and may be lawful for any judge of the superior courts of this State, to sanction such bills in equity, and grant such writs of injunction and others, as may be according to law, to affect the object of such bills.

### *Affidavit of the Complainant.*

STATE OF GEORGIA, | In person appeared before the undersigned,  
Houston County. | *Charles Smith*, Complainant in the within Bill  
of Complaint, who after being sworn, saith that honorable *Henry G.*

*Lamar*, Judge of the Superior Courts of the *Macon* Circuit, is interested in the subject matter, in the said Bill of Complaint mentioned, and which is now pending in the Superior Court of the County aforesaid.

Sworn to and subscribed,  
before me, this *May* 1, 1859. }

*James Mack, J. P.*

CHARLES SMITH.

### *Bond of Defendant in Ne Exeat.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe* as  
*Houston* County. } security, acknowledge ourselves held and bound  
to *Charles Smith*, of the County and State aforesaid, in the sum of *two*  
*thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* has been arrested by virtue of a Writ of *Ne Exeat*, (issued in favor of said *Charles Smith*, and annexed to his *Bill of Complaint*, returnable to the Superior Court of said County,) which writ of *Ne Exeat* is for the sum of *one thousand* dollars, requiring the said *John Doe* not to remove beyond the jurisdictional limits of this State; now, if the said *John Doe* (shall not depart this State until the final order of said Court,) then this obligation to be void; otherwise of force. This *May* 1, 1859.

Attest—

*James Mack, J. P.*

JOHN DOE, *principal*. [L. S.]

RICHARD ROE, *security*. [L. S.]

AN ACT to authorize the issuing of Writs of *Ne Exeat* at the instance of persons claiming personal property in Remainder and Reversion, and to preserve the rights of such persons.—*Approved Dec. 23, 1830.*

500. It shall and may be lawful for any judge of the superior courts of this State, on application to him by bill at the instance of any person or persons claiming personal property in remainder and reversion, to grant a writ of *ne exeat*, or other sufficient process, to restrain the person or persons having the control or possession of such property, from removing the same beyond the limits of this State. Or to give good and sufficient security, residing in the county, to the party claiming, in a sufficient penalty, to be fixed by such judge, that the property shall be subject and accessible to the demand of the person or persons entitled thereto, in the county wherein such property may be at the time of issuing such writ: *Provided*, that the person or persons, or one of them, suing for the benefit of such writ, shall make affidavit of his, her or their right to, and of the value of the property in question. And that he, she or they, entertain serious apprehensions, that the property will be removed beyond the limits of this State; and that his, her or their rights will be impaired, unless a remedy be afforded for the preservation thereof.

Remainder-  
man or Rever-  
sioner may  
have *Ne Exeat*.

501. SEC. II. The superior court shall, at the term to which such writ and bond may be returnable, and at any subsequent term, on exceptions to the sufficiency of the bond or of the security, or on a representation on oath, that the securities, or some of them, have removed or are about to remove from the county, determine thereon, and may in its discretion, require a new bond or additional security, for the preservation of the property in controversy. And may pursue such course therein, and in the matter of said bill, as to justice may seem proper.

New or addi-  
tional security  
may be re-  
quired.



*Affidavit of Remainder-man.*

STATE OF GEORGIA, } In person appeared before the undersigned, *Cha's.*  
*Houston County.* } *Smith*, who after being sworn, saith that he is  
*Remainder-man* of the property in the within *Bill of Complaint* de-  
 scribed and set forth; that *John Doe* is entitled to a present interest,  
 (a *life estate*,) in said property, and has the possession thereof; that said  
 property is of the value of *one thousand* dollars. And the said *Charles*  
*Smith* further swears, that he entertains serious apprehensions that the  
 said property will be removed beyond the limits of this State, and  
 that thereby his rights in said property will be impaired.

Sworn to and subscribed,  
 before me, this *May 1*, 1859. }

*James Mack, J. P.*

CHARLES SMITH.

*Bond of Person in Possession.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe* as  
*Houston County.* } security, both of the State and County aforesaid,  
 acknowledge ourselves held and bound to *Charles Smith*, of the same  
 place, in the sum of *two thousand* dollars, subject to the following con-  
 dition—

The condition of the above obligation is as follows—whereas, said  
*Charles Smith*, has filed in the Superior Court of said County, his *Bill*  
*of Complaint* against said *John Doe*, (to which has been annexed the writ  
 of *Ne Exeat*,) whereby said *Charles Smith* claims as *Remainder-man*  
 certain property in said *Bill of Complaint* mentioned, (which property is  
 now in the possession of said *John Doe*, who has a *life* interest therein,) and  
 which property is valued in said *Bill of Complaint*, at the sum of  
*one thousand* dollars: now, should the said *John Doe*, well and truly,  
 keep said property in said *Bill of Complaint* mentioned, subject and  
 accessible to the demand of said *Charles Smith*, *Remainder-man*, as  
 aforesaid, (or not remove said property beyond the limits of this State,  
 as the case may be,) then the above obligation to be void; otherwise  
 of force. This *May 1*, 1859,

Attest,—

*James Mack, J. P.*

JOHN DOE, *principal*. [L. S.]

RICHARD ROE, *security*. [L. S.]

AN ACT to provide for taking the Answers of Parties to Suits, in this  
 State, when such Parties reside without the limits of this State. And  
 for other purposes.—*Approved Feb. 17*, 1854.

502. SEC. I. *Be it enacted*, That whenever any party to any bill in  
 chancery or suit at common law, now pending, or which may hereafter be  
 commenced in any of the courts of this State, now resides or shall reside  
 without the limits of this State, but in one of the States or Territories of  
 the United States, and it shall be necessary or proper for such party to  
 make answer under oath, to a bill in chancery or to interrogatories filed  
 under the several acts of this State, to compel discoveries at common law,  
 or to respond to any notice to produce deeds or other documents in writ-  
 ing, it shall and may be lawful for such party to make oath to such answer  
 or response, before any officer of the State or Territory in which such  
 party resides or shall reside; and where such affidavit shall be made [*be-*  
*fore any officer*] duly authorized by the laws of said State or Territory to  
 administer oaths; and that the official signature and attestation of the  
 officer administering the oath to such party, shall be sufficient evidence of  
 he said affidavit having been made as it shall purport to have been made;

How Answer,  
 etc., of non-  
 resident Party  
 may be taken.

and the same shall be received in evidence in the courts of this State, in the same manner and to the same extent as if the same had been made before some officer of like character of this State: *Provided*, that the official character of the officer attesting said affidavit, shall be properly proven by a certificate of the governor, the secretary of State, the chancellor or keeper of the great seal of the State or Territory in which such affidavit shall be made, or in the manner now prescribed by law, for proving the official character of magistrates attesting the affidavits of witnesses to deeds, where such affidavits are made without the limits of this State.

AN ACT declaratory of the fifty-third section of an act, entitled "an act to amend an act, entitled an act to revise and amend the Judiciary of this State, passed 16th February, 1799."—*Approved Dec. 21, 1820.*

*Whereas*, the said recited section is in the words following, to wit: "That the Superior Courts in the several counties shall exercise the powers of a Court of Equity, in all cases where a common-law remedy is not adequate to compel parties in any cause to discover on oath, all requisite points necessary to the investigation of truth and justice; to discover transactions between co-partners and co-executors; to compel distribution of intestate estates, and payment of legacies; to discover fraudulent transactions, for the benefit of creditors. And the proceedings in all such cases, shall be by bill, and such other proceedings as are usual in such cases, until the setting down of the cause for trial. And the courts shall order the proceedings in such manner as that the same shall be ready for trial at furthest, at the third term from the filing such bill inclusive, unless very special cause be shown to induce the court to continue the same, which shall not extend to more than four terms. And all such bills shall be read and sanctioned by one of the judges, and a copy thereof served on the opposite party, at least thirty days before the filing of such bill in court. And the party against whom such bill shall be filed, shall appear and answer to the same at the next court; and if he, she or they, shall fail to do so, the facts in the said bill shall be taken *pro confesso*; and the court may proceed to decree as to justice shall appertain. *And whereas*, under the construction of the said recited section, the equity side of the court has drawn to itself exclusively, all cognizance of the cases in said section enumerated, even when such cases depend upon *aliunde* proof, to the manifest embarrassment of justice in many cases, to the injury of the good citizens of this State; for remedy whereof—

503. *Be it enacted*, That from and after the passing of this act, whenever *[in]* any of the cases enumerated in the before-recited section, a plaintiff or complainant shall conceive that he, she or they, can establish his, her or their claim, without resorting to the conscience of the defendant, it shall and may be lawful for every such plaintiff or complainant to institute his, her or their action upon the common-law side of the court, and shall not be held to proceed with the forms of equity. Any law or usage to the contrary notwithstanding.

Parties not compelled to institute their suits in Chancery.

504. SEC. II. All parties in any of the cases mentioned in the before-recited section, after the commencement of the action at common-law, may, during the progress of said suit, file his, her or their bill for the discovery of testimony in aid or defence of his, her or their common-law action, in all cases where the same may be necessary.

Parties may resort to Equity in aid of common-law Action.

AN ACT to provide for the speedy trial of certain cases in Courts of Law and Equity in this State, and for other purposes connected therewith.—*Approved March 6, 1856.*

505. SEC. I. *Be it enacted*, That all actions at law, or suits in chancery,



All the mem- now pending in the courts of this State, or which may be hereafter insti-  
bers of a Com- tuted, against the members of private associations, joint-stock companies,  
pany need not or the members of existing or dissolved corporations, to recover a debt or  
be made par- debts due by the association, company or corporation of which they are,  
ties. or have been members; or for the appropriation of a fund in their hands  
to the payment of such debt; it shall not be necessary as heretofore re-  
quired, that all the members of such association, company or corporation,  
shall be made parties in suits hereafter instituted, or continued parties in  
such as are already pending, nor any other person than the party suing,  
to be made plaintiff or complainant; but the plaintiff and complainant in  
such suits, may institute the same and proceed to judgment therein; and  
also, in those already instituted against any one or more of the members  
of such association, company or corporation, or any other person, plaintiff  
or complainant, and recover of the member or members so sued, the  
amount of unpaid stock in his or her hands, or any other indebtedness of  
such member or members: *Provided*, the same does not exceed the  
How far judg- amount of his or her debt against said association, company or corporation,  
ment extends. and in that event, so much only as will be sufficient to satisfy said debt.

506. SEC. II. That nothing in this act shall be so construed as to pre-  
vent the members who may be sued, after he or they have paid the  
amount so recovered, from suing his or their associates for contribution, if  
under the rules of law and equity, he or they are entitled to the same.

SEC. III. Repeals conflicting laws.

AN ACT to authorize the Judges of the Superior Courts as Chancellors, to  
make certain Orders and Decrees.—*Approved Feb. 20, 1854.*

Chancellor 507. SEC. I. *Be it enacted*, That the judges of the superior courts of  
may pass cer- the several judicial districts of this State, shall be and they are hereby  
tain Orders respectively authorized, at Chambers, upon petition or bill and answer,  
and Decrees where all parties in interest are represented and consenting, and where  
in Chambers. there is no question of fact in dispute, to make and pass all orders and  
decrees, in relation to the appointment or removal of trustees, and the sale  
or division of trust or other property; or the investment of trust or other  
funds. And such orders and decrees shall be as valid as if passed and  
made during the regular session of the superior court of the county, on  
the verdict of a jury; and the proceedings in any such case, shall be regu-  
Clerk must larly recorded with the other proceedings of said court, and the order or  
record them. decree entered in the book of minutes thereof.

AN ACT to amend an act for the better protection and security of Orphans  
and their Estates, approved February 18th, 1799, by extending the pro-  
visions of the fifth section thereof to Trustees and their estates.—*Ap-  
proved Feb. 10, 1854.*

Estate of 508. SEC. I. *Be it enacted*, That from and after the passage of this act,  
Trustee liable the provisions of the fifth section of the above recited [*act*,] be and the  
for waste, etc. same are hereby extended and made applicable to the estates of all trus-  
tees in this State who may have converted to their own use, wasted,  
destroyed or died chargeable to the estates of their *cestui que* trust:  
If Trustee had *Provided*, said trustees have had the actual possession, control and man-  
possession. agement of the property vested in them, as such.—[*See Ex'r and Adm'r.*]

SEC. II. That all laws and parts of laws militating against this act, be  
and the same are hereby repealed.

AN ACT to alter and amend the practice in Courts of Equity, in this State;  
and to speed causes therein; and prevent delays of Justice.—*Approved  
Dec. 22, 1857.*

509. SEC. I. *Be it enacted*, That bills shall be served on the defendant, at least, thirty days before the term of the court to which the bill is returnable. Service 30 days before Court.
510. SEC. II. That all equity causes shall stand for trial at the second term of the court, from the filing of the bill, and service thereon on defendant or defendants. When to be tried.
511. SEC. III. That it shall not, hereafter, be necessary to file replication, or take any order, setting down a case for trial, as now practised in this State; but, upon service on defendants, plaintiff may, at once, proceed to prepare his case for trial. Replication and Order, not necessary.
512. SEC. IV. That at the first term of the Court, the defendant may plead, answer, or demur, and if a demurrer, or plea, is filed, the said plea or demurrer, or both, shall be tried and disposed of, at the first term of the court to which the bill is returnable; and if overruled, defendant shall file his answer within thirty days from the time of the judgment on such demurrer or plea; and if such answer is not full, exceptions may be taken thereto; and on ten days' notice, may be argued and disposed of, in vacation; and defendant required to answer fully, at such time and on such terms as the judge may order or direct. May Demur or Plead at first term; and if overruled, must Answer in 30 days. Exceptions to Answer, etc., may be argued in vacation.
513. SEC. V. That defendant, if in his judgment he has an equitable defence, shall not be forced, or obliged, to file a cross-bill, but may set up such equitable defence in his answer, and pray for and obtain such relief, as he may be entitled to upon the principles of justice, in as full and ample a manner as he would now be entitled to under a cross-bill. And may, if he desires it in writing, in his answer, compel an answer from plaintiff, at such time and upon such terms as the court may order and direct. Cross-Bill need not be resorted to where the Respondent has an Equitable demand against the Complainant. Parties may be examined in open court, as witnesses; or by Commission; or personally if in Court at the trial.
514. SEC. VI. That either party may examine, in open court, the opposite party, on the stand, as a witness, notwithstanding the answer may be filed, upon serving such party with subpoena, as now provided by law, when such party resides in the county where the trial is had; and if such party resides out of the county, may sue out commission and examine such party, as now provided by law. And if the party is in court, at the time of trial, he may be examined without having been served with subpoena. Amendments may be made. Respondent must have time to Answer. If not for delay. Answer to formal amendment may be waived. If Answer be required, time given.
515. SEC. VII. That plaintiffs may amend, at any time, and defendants shall have reasonable time to answer such amendment; but, making an amendment shall not open the whole case to demurrer, unless the amendment makes a new bill: *Provided however*, plaintiffs shall not, capriciously, amend his pleadings, for the purpose of delay only. How this Act to be construed by the Courts.
516. SEC. VIII. That defendants shall only be required, when an amendment is made, to answer such amendment; and if the amendment is merely formal, the answer may be waived, and the cause proceed. If the amendment is one of substance, and not of form merely, the defendant shall have reasonable time to answer such amendment, as the court may order and direct. Application of this Act.
517. SEC. IX. That courts of justice, in construing this act, shall give it a reasonable interpretation, to speed the trial of equity causes, allowing reasonable time for defendants, and discouraging any unnecessary delay; and no right shall be defeated or prejudiced, on account of mere technicality of form, not affecting the real justice and merits of the case.
518. SEC. X. That this act shall not extend to, or be applicable to any case now pending, or any case which may be filed and served before the first day of April next.
- SEC. XI. [Repeals conflicting laws.]

AN ACT for the appointment of Auditors, in certain cases.—*Approved Dec.*  
13, 1858.



Auditor may be appointed in term-time or vacation. 519. That in all cases now pending on the equity side of the superior courts, or which may be hereafter brought, involving matters of account, and which cannot be properly investigated by a jury, either party to such case may, upon application to the superior court, when in session, or to the presiding judge thereof, in vacation, have an auditor appointed by said court or judge, to investigate the matters of account, ascertain how they stand and report the result thereof, with a full and clear statement of the whole, to the court. Which report shall, under the direction of the court, be submitted as evidence to the jury, but not to be conclusive on either party. And the whole cost of preparing said report, to be settled by the court, and paid for by the person applying for the report, unless the court, by its judgment, shall decide that other parties to the case, shall pay the whole or a part of the same; the said court being hereby authorized to so decide, and to proportion the part to be paid, and to settle the whole of said expense, according to justice.

He must Report.

Cost of Auditor, how paid.

### CERTIORARI AND INJUNCTION.

*Certiorari* how applied for and granted. 520. SEC. LIV. Where either party in any cause in any inferior court shall take exceptions to any proceedings in any cause affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself or his attorney, and if the same shall be overruled by the court, it shall and may be lawful for such party, on giving twenty days' notice to the opposite party or his attorney, to apply to one of the judges of the superior court, and if such judge shall deem the said exceptions to be sufficient, he shall forthwith issue a Writ of *Certiorari* directed to the clerk of such inferior court, requiring him to certify and send up to the next superior court to be held in the said county, all the proceedings in the said cause. And at the term of the superior court to which such proceedings shall be certified, the said superior court shall determine thereon, and order the proceedings to be dismissed, or return the same to the said inferior court, with order to proceed in the said cause.

### *Exceptions Presented to the Court.*

JOHN DOE	}	GEORGIA—HOUSTON COUNTY.
<i>vs.</i>		January Term, 1859. <i>Assumpsit</i> in the Inferior
RICHARD ROE.	}	Court, and <i>Verdict</i> for the Plaintiff.

And now comes the *Defendant*, by his Attorney, *James A. Pringle*, and Excepts to the proceedings in the above-stated cause, and for cause of Exception, says—*first*, Because the Court decided contrary to law, in this, to wit—[*here set out fully and distinctly the Error complained of.*]

JAMES A. PRINGLE, *Def't's Atty.*

Presented to and overruled by the Court.

JOHN D. WINN, J. I. C.

WILLIAM T. SWIFT, J. I. C.

WM. F. POSTELL, J. I. C.

NOTE.—There is no other way of objecting to a *Decision* of the Inferior Court, and having it reviewed, but by *Certiorari*, founded on Exceptions. From a *Verdict* an appeal is allowed, but not from a *Decision* of the Court.

*Notice to the Opposite Party.*

JOHN DOE  
 vs.  
 RICHARD ROE. } *Assumpsit in Houston Inferior Court. To the Defendant in the Case.*

You are hereby notified that I shall apply to the honorable *Henry G. Lamar*, Judge of the Superior Courts of the *Macon Circuit*, within the time prescribed by law, for a Writ of *Certiorari*, in the above case. This *January 3, 1859.*

JAMES A. PRINGLE, *Def't's Att'y.*

AN ACT to regulate the granting *Certioraries* and Injunctions in this State.  
 —Approved Dec. 16, 1811.

521. SEC. I. From and after the passing of this act, it shall not be lawful for any judge of the superior court of this State, to sanction or grant any *certiorari* unless the person or persons aggrieved and applying for the same, shall have previously paid all cost which may have accrued on the trial below, and have given to the magistrate or magistrates, or justices of the inferior court, or clerk of the inferior court, as the case may happen, good and sufficient security for the eventual condemnation money, or any future costs which may accrue.

Bond and Security must be given on application for *Certiorari*.

522. SEC. II. The person applying for said *certiorari* shall produce to the judge authorized to grant the same, a certificate from the magistrate or magistrates, or justices of the inferior court who tried the case, or clerk of the inferior court, whose duty it shall be to give said certificate, informing said judge that the costs have been paid, and security given, in terms of this act.

Certificate of the payment of Costs.

523. SEC. III. No injunction shall be sanctioned or granted by any judge of the superior courts of this State, until the party requiring the same shall have previously given to the party against whom such injunction is to operate, by application to the clerk of the superior court for that purpose, a bond with good and ample security for the eventual condemnation money, together with all future costs. Which said bond shall be lodged in said clerk's office, subject to the order of the court, and have paid all costs which may have accrued in the case, the subject of the injunction.

Bond and Security required upon application for Injunction.

524. SEC. IV. Where any doubt arises as to the sufficiency of the security tendered to any of the persons, authorized by this act to take the same, the party so authorized to take the said security, may compel the party to justify upon oath, and such justification upon oath shall amount to such sufficiency as to exonerate the party taking the security, from any liability.

Surety may be compelled to justify.

525. SEC. V. No judge of the superior court shall grant or sanction any *certiorari* [see 532] or injunction out of his judicial district, unless there shall be a vacancy in any of the other districts, or the judge thereof be so indisposed, or be absent therefrom, so that the business of granting *certioraries* and injunctions cannot be speedily done.

No Judge may grant Injunction out of his District unless in certain cases.

526. SEC. VI. In all cases of bills of injunction, where the defendant or defendants reside out of the State, a service on the attorney of the plaintiff in the original action, and a publication of a six months' rule, obtained from the judge granting the injunction, shall be deemed a sufficient service.

How Service of Rule may be made on non-resident Defendant.

527. SEC. VII. All bills of injunction granted by the superior court, or any of them; or which may hereafter be granted, shall stand and be considered as open for argument and amendment, at the first term of the

Injunction when to be argued, amended, and disposed of.



superior court which may be holden after the passing of this act, in and for the county where the suit originated, or the first term after the granting such bill of injunction. And in all cases of injunction, they shall be disposed of and a decision made, at the second term of said court, held in and for the county where such suit originated. Any law to the contrary notwithstanding.

Second In-  
junction not  
to be granted. 528. SEC. VIII. The dilatory practice of granting bills of injunction a second time, after the dissolution of the first bill or bills, shall not be admissible or allowed of in any case or cases whatever.—[*See next Act.*]

AN ACT to repeal so much of the fifth section of an act passed on the 16th Dec. 1811, entitled “an act to regulate the granting of *Certioraries* and Injunctions in this State,” so far as relates to *Certioraries*.—*Approved Dec. 27, 1821.*

*Whereas*, much inconvenience has resulted in practice, and frequently great injustice has been done to parties litigant in the several Justices’ Courts of this State, from the provisions of the said 5th section [*of the above-described act* ;] for remedy whereof—

5th sec. act  
of 1811 re-  
pealed. 529. *Be it enacted*, That so much of the 5th section of an act passed on the 16th day of December, in the year 1811, as relates to *certioraries*, be and the same is hereby repealed.

AN ACT to amend an act to regulate the granting of *Certioraries* and Injunctions in this State, passed Dec. 16, 1811.—*Approved Dec. 27, 1842.*

Judge may  
grant Injunc-  
tion at his  
discretion. 530. SEC. I. *Be it enacted*, That from and after the passing of this act, the third section of the above-recited act, be so altered and amended as to authorize the judges of the superior courts of this State, to grant injunctions upon such security and under such terms as in their discretion such case may require.

Second In-  
junction may  
be granted. 531. SEC. II. It shall be lawful for a second injunction to be granted in certain cases, where a previous injunction may have been dismissed for cause not connected with the merits of the case. And when the judge to whom the application may be made, shall be satisfied that a second injunction should issue.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend the several laws of this State in relation to Writs of *Certiorari*.—*Approved Feb. 21, 1850.*

How the Writ  
of *Certiorari* is  
to be had. 532. SEC. I. *Be it enacted*, That from and after the passage of this act, in all cases in any of the justices’ courts of this State, when either of the parties shall be dissatisfied with the judgment of said court, it shall be lawful as heretofore for said party so dissatisfied, to apply for and obtain a *certiorari* on

Petition how  
to be directed. Clerk to issue  
the Writ. complying with the requisitions heretofore prescribed by law: *Provided always*, that the petition for *certiorari* shall not be to the judge of the superior court, but to the superior court. And on being filed in the office of the clerk of the superior court, it shall be his duty to issue the writ, directed to the justices of the peace of the district where the decision complained of was made; directing them to certify and send up the proceedings in the case to

When return-  
able. able. twenty days after the issuing of said writ, then the said writ shall be return-  
Sheriff must  
serve Writ. able to the next succeeding court, which said writ shall be served on one of the said justices (by the party applying for the *certiorari*,) by the sheriff, deputy or any constable, at least fifteen days previous to the court to which the return is to be made. And it shall be the duty of the clerk of the superior

Clerk must  
keep Docket.

court to place the case on the *certiorari* docket, which said docket the judge of the superior court shall take up and dispose of in its order, under such rules, regulations and restrictions as are now prescribed by law for disposing of *certiorari* cases.

533. SEC. II. That the writs of *certiorari* granted in each case, under the provisions of the above section, shall operate as a supersedeas of the judgment in the justices' court until the final hearing in the superior court. Supersedeas.

534. SEC. III. In all cases when the error committed by said justices' court, is an error in law, which must finally govern the case; and in all other cases when the judge of the superior court shall be satisfied there is no question of fact involved which makes it necessary to send the case back for a new hearing in the justices' court, then it shall be the duty of said judge to make a final decision on said case without sending it back to the justices' court, with instructions as heretofore. Judge may make final decision in the case when the question is one of law.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Petition for Certiorari.*

STATE OF GEORGIA, ) *To the Superior Court of said County.*  
     Houston County. ) The Petition of *Richard Roe*, sheweth that heretofore, to wit, at the *January* Term, 1859, of the Justices' Court, in and for the 619th District, G. M. (*James Mack and Charles Smith*, Justices of the Peace, presiding,) there came on to be tried, in said Court, then and there, a cause which had been by *John Doe*, previously commenced against your Petitioner, on an *Open Account*, for the sum of *forty* dollars. And your Petitioner avers, that at the said Term of said Court, a Judgment was rendered, on said *Account* against your Petitioner, for the full amount of said *Account*. And your Petitioner avers, [*here set out fully and at large the cause of dissatisfaction, whether it relates to law or fact.*] Therefore, to the end that justice may be done in the premises, your Petitioner prays the issuing of the State's Writ of *Certiorari*, directed to the presiding Justices of said Court, requiring them to certify and send up to the next Superior Court, to be held in and for said County, all the proceedings in the cause aforesaid. And may it please the Court to grant to Petitioner, such relief in the premises as may be agreeable to law and justice. And your Petitioner will ever pray, &c.

CLINTON S. DUNCAN, *Pet'r's Att'y.*

I, *Richard Roe*, do solemnly swear, that the foregoing Petition for *Certiorari*, is not filed in this case, for the purposes of delay only. And I verily believe, I have a good cause for *Certiorari*.

Sworn to and subscribed,  
 before me, this *March 1*, 1859. }

RICHARD ROE.

*James Johnson, J. P.*

NOTE.—The Affidavit is an essential part of the application, and therefore, it is unnecessary, in the Affidavit, to re-state the place where it is made.

### *Bond of the Applicant for Certiorari.*

STATE OF GEORGIA, ) We, *Richard Roe* as principal, and *John Cofield*  
     Houston County. ) as security, both of the County and State aforesaid, acknowledge ourselves held and bound unto *John Doe*, and his



assigns, in the sum of *eighty* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe*, heretofore, instituted his action on an *Open Account* for *forty* dollars, in the Justices' Court of the 619th District, G. M. against said *Richard Roe*; on which action said Court of said District, rendered Judgment in favor of the Plaintiff, for the sum of *forty* dollars; with which Judgment of said Court, said *Richard Roe* is dissatisfied, and is about to move the issuing of the Writ of *Certiorari*. Now, should said *Richard Roe*, well and truly, pay the said *John Doe*, the eventual condemnation money and all future costs, then the above obligation to be void; otherwise, of force. This *February 6*, 1859.

Approved,—  
*James Johnson, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
JOHN COFIELD, *sec'ty.* [L. S.]

### *Certificate of the payment of Cost.*

STATE OF GEORGIA, } I, *James Mack*, one of the Justices of the Peace,  
*Houston County.* } in and for the 619th District, G. M. hereby certify,  
that *Richard Roe*, (Defendant in an action, in said Court, instituted by  
*John Doe* against said *Richard Roe*, on an *Open Account*, for the sum of  
*forty* dollars, and on which *Account*, a Judgment was rendered in favor  
of the Plaintiff,) has paid the Costs in said case, and given Bond and  
security, according to law, in cases of application for *Certiorari*. This  
*February 6*, 1859.

JAMES MACK, J. P.

NOTE.—The Act of Dec. 27, 1842, (see Justices' Court,) provides, (in cases of *Certiorari*,) that "if such party," (dissatisfied with the proceedings of the Court,) "will make an Affidavit, in writing, that he or she is advised and believes, that he or she has good cause for "*certioraring*" the same to the Superior Court, and that owing to his or her poverty, he or she is unable to pay the cost and give security, as required by law, such affidavit shall, in every respect, answer instead of the certificate of the presiding Justice, that the cost has been paid and security given, as now required by law."

### *Writ of Certiorari.*

CLERK'S OFFICE, *Superior Court, February 6*, 1859.

STATE OF GEORGIA, } To the Justices of the Peace in and for the 619th  
*Houston County.* } District, Georgia Militia.

Whereas, *Richard Roe* alleges by his Petition for *Certiorari*, that at the *January* Term of your Court, eighteen hundred and *fifty-nine*, Judgment was rendered against him, in favor of *John Doe*, on an *Open Account*, for the sum of *forty* dollars, with which Judgment, Petitioner is dissatisfied. And whereas, said *Richard Roe* has complied with the requirements of the law, in cases of application for *Certiorari*; now, therefore, you are hereby notified and required to certify and send up to the Superior Court, to be held in and for said County, on the *fourth* Monday in *April* next, under your hands and seals, all the facts and proceedings in the case, in your Court, aforesaid.

Witness, the honorable *Henry G. Lamar*, Judge of said Court.

WILLIAM H. MILLER, Clerk.

*Return of the Justices of the Peace.*

STATE OF GEORGIA, } *To the Superior Court of said County.*  
 Houston County. } In Answer to the Writ of *Certiorari*, to us directed, dated *February* 6, 1859, the undersigned submit, that the following is a full, direct and complete Answer; containing all the facts and proceedings, in the case of *John Doe* against *Richard Roe*, action on an *Open Account* pending in said Court; upon which *Account* Judgment was rendered for the Plaintiff against the Defendant, for the sum of *forty* dollars.

[*Here set out fully and distinctly all the facts and circumstances connected with the case, so as to meet the requirements of the Petition for Certiorari, fully.*]

All of which is respectfully submitted.

*Given under our hands and private seals, there being no seal of Office, this February* 8, 1859.

JAMES MACK, J. P. [L. S.]

JOHN JONES, J. P. [L. S.]

NOTE.—The Answer of the Justices of the Peace must not be written out by either of the Parties or their Attorneys; nor written out by either of them and transcribed by another person; nor dictated by them, or either of them.

AN ACT to amend the several laws of this State upon the subject of Writs of *Certiorari*.—*Approved Dec. 22, 1857.*

535. SEC. I. *Be it enacted*, That from and after the first day of January next, no writ of *certiorari* shall be granted or issued to any Justices' Court in this State, unless the party applying for the same, his agent or attorney, shall make and file with his petition the following affidavit, to wit:—

*Georgia,*                      *County.*

I, A B, do solemnly swear, that the Petition for *Certiorari*, is not filed, in this case, for purposes of delay only; and I verily believe I have good cause for *Certiorari*.

Sworn to and subscribed, before me, this                      day of                      18                      .

536. SEC. II. That it shall and may be lawful for the presiding judge before whom any writ of *certiorari*, hereafter granted, may be heard, on motion of the opposite party, to order, that not more than twenty per cent. damages, against the plaintiff in *certiorari*, in case it shall be made appear to him that the said *certiorari* was frivolous and applied for without good cause for the same, or for purposes of delay only; and judgment may be entered accordingly. Any law, usage, or custom, to the contrary notwithstanding.

Damages  
allowed for  
frivolous *Cer-*  
*tioraries.*

SEC. III. That all laws and parts of laws against this act, be and the same are hereby repealed.

AN ACT to alter and amend an act entitled an act supplementary to an act entitled "an act regulating the granting of *Certioraries* and Injunctions in this State," passed 29th Dec. 1838, so far as relates to the time allowed for applying for writs of *Certiorari*.—*Approved Dec. 11, 1858.*

*Whereas*, much delay and inconvenience in the final disposition of causes in the Justices' Courts of this State, arise from the unreasonable time allowed for making application for Writs of *Certiorari*; for remedy whereof—



Three months allowed to apply for *Certiorari*. 537. SEC. I. *Be it enacted*, That the provisions of said recited act, passed Dec. 29th, 1838, which allows six months within which to apply for writs of *Certiorari*, be so altered and amended as to require parties desiring such writ, to apply for the same within three months after the final determination of the case in the justices' court.

SEC. 2. [Repeals conflicting laws.]

NOTE.—All Writs of *Certiorari*, shall after having been docketed by the Clerk, be delivered to the Magistrate whose proceedings are the subject of complaint. And written Notice shall be given to the opposite party in interest, at least ten days before the hearing of the cause, unless the *Certiorari* shall be applied for and sanctioned within twenty days after the Decision complained of.—15th Com. Law Rule of Court.

### Notice.

STATE OF GEORGIA, } *John Doe*—You are hereby notified that in the  
Houston County. } case lately decided in the Justices' Court of the  
619th District, G. M. in your favor; in which case I was Defendant, I have applied for and have had issued, the Writ of *Certiorari*, returnable to the next Term of the Superior Court of said County, to be held on the *fourth* Monday in *April* next. This *February* 8, 1859.

RICHARD ROE, *Plff in Cer.*

## MORTGAGE ON REAL ESTATE.

Method of foreclosing Mortgage on Real Estate. 538. SEC. XVII. The method of foreclosing mortgages on real estate in this State, be as follows—Any person applying and entitled to foreclose such mortgage, or his, her or their attorney, shall petition the superior court of the county wherein such mortgaged property may be, stating the case and the amount of his, her or their demand, and describing such mortgaged property. And the court shall grant a rule, that the principal, interest and cost, shall be paid into court within twelve months [*on or before the first day of the next term—see 540*] thereafter; which rule shall be published in one of the public gazettes of this State, at least once in every month [*once a month for four months—see 539,*] until the time appointed for payment, or served on the mortgager, or his [*her or their*] special agent, at least six [*three months—see 539,*] months previous to the time the money is directed to be paid. And unless the principal, interest and costs be so paid, the court shall give judgment for the amount which may be due on such mortgage, and order the property mortgaged to be sold, in such manner as is prescribed in cases of execution. And the money shall be paid to the mortgagee or his attorney; but where there shall be any surplus, the same shall be paid over to the mortgager or his agent. And in case of any dispute as to the amount due on any mortgage, if the mortgager shall appear within the time prescribed by this act, and make affidavit that he hath made payments which have not been credited on said mortgage; or that he is entitled to sets-off which in equity ought to be allowed, the court shall appoint one or more fit person or persons, to audit and liquidate the same; but either party shall be entitled to a new trial therefrom, which shall be tried in like manner as shall be prescribed for the trial of appeals in other cases.

Rule *ni. si.*

Rule absolute.

Surplus to be paid to Mortgager.

Dispute as to amount due.

Appeal allowed.

*Mortgage Deed of Real Property.*

STATE OF GEORGIA, } This Indenture made this *first* day of *May*, in  
*Houston County.* } the year of our Lord eighteen hundred and *fifty-six*, between *Charles Smith*, of the County and State aforesaid, of the one part, and *Richard Roe*, of the same place, of the other part, Witnesseth, that the said *Charles Smith* hath this day made and delivered to said *Richard Roe*, his certain *Promissory Note*, subscribed with his hand, and bearing even date with these presents, whereby the said *Charles Smith* hath promised to pay said *Richard Roe*, or bearer, *one thousand dollars*, on or before the *twenty-fifth* day of *December*, next ensuing the date thereof, for value received. Now, for and in consideration of the sum of *ten dollars*, by the said *Richard Roe* to the said *Charles Smith*, in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of the aforesaid *Promissory Note*, the said *Charles Smith* hath granted, bargained and sold, and doth by these presents grant, bargain, and sell unto the said *Richard Roe*, his heirs and assigns, all that tract or parcel of land, situate, lying and being in the County aforesaid, known as lot number *forty-nine*, in the *tenth* district of said County; agreeably to original survey, containing *two hundred two and a half acres*, more or less; with all the rights, members, and appurtenances to said lot of land in any wise appertaining or belonging. To have and to hold the said bargained premises to the said *Richard Roe*, his heirs and assigns, to his and their own proper use, benefit and behoof, forever. And the said *Charles Smith*, for himself, his heirs, Executors and Administrators, the said bargained premises, unto the said *Richard Roe*, will warrant and forever defend, against the claim of himself and heirs, and against the claim of all other person whatsoever. *Provided nevertheless*, That if the said *Charles Smith*, his heirs, Executors and Administrators, shall well and truly pay, or cause to be paid, unto the said *Richard Roe*, his heirs and assigns, the afore-mentioned sum of *one thousand dollars*, on the day and time mentioned and appointed for the payment thereof, in the said *Promissory Note* mentioned, with lawful interest on the same, according to the tenor of said *Note*, then, and from thenceforth, as well this present Indenture and the right to the property thereby conveyed, as said *Promissory Note*, shall cease, determine and be void, to all intents and purposes.

In witness whereof, the said *Charles Smith* hath hereunto set his hand and affixed his seal, the day and year first above written.

Signed, sealed and delivered, }  
 in presence of }  
*John Stone,*  
*James Mack, J. P.* }

CHARLES SMITH, [L. S.]

*Note for the Securing the Payment of which the Mortgage was Given.*

On or before the *twenty-fifth* day of *December* next, I promise to pay *Richard Roe*, or bearer, *one thousand dollars*. For value received.  
 This May 1, 1856. CHARLES SMITH.



*Petition of Mortgagee.*

STATE OF GEORGIA, }  
     Houston County. }    *To the Superior Court of said County.*

The Petition of *Richard Roe* sheweth, that heretofore, to wit, on the *first* day of *May*, in the year of our Lord eighteen hundred and *fifty-six*, *Charles Smith*, of said County, made and delivered to your Petitioner, his certain instrument in writing, called a *Promissory Note*, whereby he promised, on or before the *twenty-fifth* day of *December*, next following the date of said *Note*, to pay your Petitioner, or bearer, *one thousand dollars*, for value received. And for the better securing the payment of said *Note*, on the day and year aforesaid, said *Charles Smith* executed and delivered to your Petitioner his certain Deed of Mortgage, conveying to your Petitioner lot of land number *forty-nine*, in the *tenth* district of said County, conditioned to be void upon the payment of the *Promissory Note* aforesaid; (which *Note* and Deed of Mortgage are here in Court to be shown.) Yet, your Petitioner avers, that said *Charles Smith*, although so indebted, and to pay said *Note* often requested, hath not paid said *Note*, or any part thereof, but the same to pay hath hitherto refused and yet refuses—wherefore, your Petitioner prays that such rule and order may be made and passed by the Court, as will be in conformity to the statute in such case made and provided, etc. *April Term, 1858.*

JAMES A. PRINGLE, *Plff's Att'y.*

*Rule Nisi.*

GEORGIA—HOUSTON COUNTY.—*In the Superior Court.*

*Present, the honorable Henry G. Lamar, Judge of said Court.*

RICHARD ROE }  
     *vs.* }  
 CHARLES SMITH. }    Mortgage, etc.—*April Term, 1858.*

It appearing to the Court by the Petition of *Richard Roe*, (accompanied by the *Note* and Mortgage Deed,) that, on the *first* day of *May*, eighteen hundred and *fifty-six*, the defendant made and delivered to the Plaintiff, his *Promissory Note*, bearing date the day and year aforesaid, whereby the Defendant promised, on or before the *twenty-fifth* day of *December*, next following the date of said *Note*, to pay the Plaintiff, or bearer, *one thousand dollars*, for value received. And, that afterwards, on the day and year aforesaid, the Defendant, the better to secure the payment of said *Note*, executed and delivered to the Plaintiff his Deed of Mortgage, whereby the said Defendant Mortgaged to the Plaintiff lot of land number *forty-nine*, in the *tenth* district of said County, containing two hundred two and a half acres, more or less. And it further appearing that said *Note* remains unpaid, it is, therefore ordered, that the said Defendant do pay into Court, on or before the first day of the next term thereof, the principal, interest and costs due on said *Note*, or show cause to the contrary, if any he can. And that on the failure of the Defendant so to do, the equity of redemption in and to said Mortgaged premises, be forever thereafter barred and foreclosed. And it is further ordered, that this Rule be published in the *Southern Recorder*, once a month, for three months

previous to the next term of this Court, or served on the Defendant, or his special Agent, or Attorney, at least three months previous to the next term of this Court.

*A true extract from the Minutes of this Court.*

WILLIAM H. MILLER, *Clerk.*

*Rule Absolute.*

GEORGIA, HOUSTON COUNTY.—*In the Superior Court.*

*Present, the honorable Henry G. Lamar, Judge of said Court.*

RICHARD ROE	}	Mortgage, etc.—October Term, 1858.
<i>vs.</i> CHARLES SMITH.		

Whereas, at the *April* Term of this Court, last past, a Rule *Nisi.* was granted in the above-stated case, requiring the Defendant to show cause why he should not pay into Court the principal, interest and costs, due on a certain *Note* given by the Defendant to the Plaintiff, on the *first* day of *May*, eighteen hundred and *fifty-six*, and to fall due on the *twenty-fifth* day of *December* next ensuing, for the sum of *one thousand dollars.* For the better securing the payment of which *Note*, said Defendant had executed on the same day and year aforesaid, to the Plaintiff, his Deed of Mortgage to the Plaintiff for lot of land number *forty-nine*, in the *tenth* district of said County, containing two hundred two and a half acres, more or less. And it appearing that a copy of said Rule *Nisi.* has been served on the Defendant *personally*, and that said Defendant still neglects and refuses to pay the amount due on said *Note*, or to show cause to the contrary: therefore, it is ordered, considered and adjudged, that the equity of redemption in and to said Mortgaged premises be and the same is hereby barred and forever foreclosed. And it is further ordered, that the Plaintiff do recover of and from the Defendant, the sum of *one thousand dollars* for his principal debt, the sum of *seventy-five dollars* for his interest up to this date (with all accruing interest), and the sum of *fifteen dollars* for his costs in this behalf laid out and expended, and that Execution issue against the Mortgaged premises for the sums aforesaid. And the Defendant in mercy, etc. Judgment signed 25th *October*, 1858.

JAMES A. PRINGLE, *Pl'ff's Att'y.*

*Mortgage Fi. Fa.*

STATE OF GEORGIA,	}	<i>To all and singular the Sheriffs of said State.</i>
<i>Houston County.</i>		

We command you, that of lot of land number *forty-nine* in the *tenth* district of said County, the property of *Charles Smith*, described and conveyed in a certain Indenture of Mortgage, bearing date on the *first* day of *May*, eighteen hundred and *fifty-six*, you cause to be made the sum of *one thousand dollars* principal, *seventy-five dollars* interest up to the *twenty-fifth* instant (with all accruing interest), and *fifteen dollars* costs, which *Richard Roe* lately in our Superior Court, at *Perry*, in the County aforesaid, recovered against said *Charles Smith*, as well for damages by reason of the non-performance of certain promises by the said *Charles Smith* before that time made, as for costs and charges in



his suit, in that behalf expended, whereof said *Charles Smith* is convicted and liable, as appears to us of record. And have the said sums of money before the said Court, at *Perry* aforesaid, on the *fourth* Monday in *April* next, to render to the said *Richard Roe*, his damages, costs and charges aforesaid. And have you then and there this Writ.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this *October 30*, 1858.

WILLIAM H. MILLER, *Clerk*.

### *Sheriff's Sale of Mortgaged Property.*

On the first Tuesday in *January* next, will be sold at the court-house door, in the town of *Perry*, *Houston* County, between the lawful hours of sale and to the highest and best bidder, lot of land number *forty-nine* in the *tenth* district of said County, containing *two hundred two and a half acres*, more or less, the same being well improved. Levied on as the property of *Charles Smith*, by virtue of a Mortgage *fi. fa.* issued from the Superior Court of said County in favor of *Richard Roe*. This *November 1*, 1858.

MADISON MARSHALL, *Sheriff*.

### *Affidavit of the Defendant.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
*Houston* County. } *Charles Smith*, who after being sworn saith, that on the *first* day of *May*, eighteen hundred and *fifty-seven*, he paid the sum of *three hundred* dollars, on a *Note* and Mortgage, given to *Richard Roe*, for *one thousand* dollars, dated the *first* day of *May*, eighteen hundred and *fifty-six*, and to become due the *25th* day of *December* thereafter. (For the better securing the payment of which *Note*, deponent executed to the said *Richard Roe*, his Deed of Mortgage, of *even* date with said *Note*, conveying conditionally, to said *Richard Roe*, lot of Land number *forty-nine*, in the *tenth* district of said County.) Which payment has not been credited thereon.

Sworn to and subscribed.  
 before me, this *June 1*, 1857. }  
*James Mack*, J. P.

CHARLES SMITH.

AN ACT to amend an act entitled "an act to amend the Judiciary of 1799, so far as relates to Mortgages on Real Estate."—[The act of which this is amendatory is omitted as being superseded.]—*Approved Dec. 21*, 1829.

Mortgage on  
 Real Estate  
 when to be  
 foreclosed.  
 Rule to be  
 granted and  
 served.

539. From and after the passage of this act, when any person or persons, his, her or their agent or attorney shall petition the superior court, as prescribed by the Judiciary of 1799, for the foreclosure of any Mortgage on real estate, the court shall grant a rule directing that the principal and cost shall be paid into court within six months thereafter; [see 540;] which rule shall be published in one of the public gazettes of this State, once a month for four months, or served on the mortgager or his, her or their special agent or attorney, at least three months previous to the time the money is directed to be paid: *Provided*, that nothing in this act shall be so construed as to affect any mortgage which may exist at the time of the passage of this act.

SEC. II. So much of the said Judiciary of 1799, (and of the said amendatory act,) as militates against this, is hereby repealed.

AN ACT to alter and amend the several acts regulating the foreclosures of Mortgages upon Real Estate.—*Approved Dec. 26, 1836.*

540. From and after the passage of this act, in all cases where any application shall be made to any superior court of this State for the foreclosure of any Mortgage upon real estate, it shall be the duty of such court to pass an order, requiring the mortgager to pay the principal and interest due upon such mortgage, into court, on or before the first day of the next term, which order shall be served or published, in the manner now required by law. And if such order be not complied with by the mortgager, the court may at such term, pass a rule absolute for the sale of the mortgaged property.

Rule to be made absolute at the next term.

#### MORTGAGES OF PERSONAL PROPERTY.

541. SEC. XVIII. Mortgages of personal property shall be foreclosed in the following manner—Any person or persons holding a mortgage on personal property, [*or his agent or attorney-in-fact, or at law—see 542,*] and wishing to foreclose the same, shall make application to one of the judges of the superior or justices of the inferior courts, and make affidavit before him of the amount of principal and interest due on such mortgage. Which affidavit shall be annexed to such mortgage, and thereupon the clerk of the superior or inferior courts shall issue execution as on a judgment. Which execution being delivered to the sheriff, it shall be his duty to levy on the property wheresoever the same may be found. And after advertising the same in one or more of the public gazettes of this State, at least sixty days, the sheriff shall set up and expose the same to sale; and the money arising from such sale shall be first applied to discharge the amount due on such mortgage, and all legal costs; and the overplus, if any, to be paid to the mortgager: *Provided always*, that if any dispute shall happen as to the sum due on any mortgage, that it shall and may be lawful for the said judge or justices of the inferior courts, on affidavit, to order such sale to be postponed, the mortgager giving bond, with good and sufficient security, in double the sum sworn to be due, for returning such property when called for by the sheriff. Which bond shall be assignable by the sheriff to the mortgagee, who may sue and recover thereon. But the jury shall be sworn to give at least twenty-five per cent. damages, in case it shall appear that such application was intended for delay only.

Mortgage on personal Property how foreclosed, etc.

#### *Mortgage of Personal Property.*

STATE OF GEORGIA,    )  
Houston County.        )  
Know all men by these presents, that I, *John Doe*, of the County and State aforesaid, for and in consideration of the sum of *ten dollars* cash in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of a certain *Promissory Note*, which I have this day made and delivered to *Richard Roe*, of the same place, bearing *even date* with these presents, and to become due on the *twenty-fifth* day of *December* next, whereby I promise to pay said *Richard Roe* or bearer *five hundred dollars*, for value received, have bargained and sold to said *Richard Roe*, the following property, to wit: a certain *Negro man named Jacob*, of *yellow complexion*,



*twenty years of age, five feet ten inches high, sound and well. To have and to hold the said bargained property, to him the said Richard Roe, his heirs and assigns for ever, (the said John Doe retaining possession of said Negro man.) And I, the said John Doe, for myself, my heirs, Executors and Administrators, the said bargained property unto the said Richard Roe, his heirs and assigns, against myself, my heirs, Executors and Administrators, and against all and every other person and persons whomsoever, shall and will warrant and defend by these presents. Provided nevertheless, that if the said John Doe, his heirs, Executors or Administrators, shall and do, well and truly pay, or cause to be paid, unto the said Richard Roe, his heirs or assigns, the afore-mentioned sum of five hundred dollars, on the day mentioned and appointed for the payment thereof in said Note, with lawful interest on the same, according to the tenor and effect of said Note, then and from thenceforth, as well this Bill of Sale, and the right to the property therein conveyed, as the said Promissory Note, shall cease, determine and be void, to all intents and purposes.*

In testimony whereof, the said John Doe hath hereunto set his hand and affixed his seal, this *May 1, 1857.*

Signed, sealed and delivered,  
in presence of  
John Stone,  
James Mack, J. P. }

JOHN DOE. [L. S.]

### *Affidavit of Foreclosure annexed to Mortgage.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } *Richard Roe, the Mortgagee*, who being duly sworn saith, that *John Doe*, the Mortgager, is justly indebted to him, deponent, on *this Mortgage*, the sum of *five hundred dollars* for his principal debt; the sum of *thirty dollars* for his interest, and that said sums are now due and unpaid.

Sworn to and subscribed,  
before me, this *January 1, 1858.* }  
John D. Winn, J. I. C.

RICHARD ROE.

### *Fiat of the Justice of the Inferior Court.*

At CHAMBERS, *January 1, 1858.*

STATE OF GEORGIA, }  
Houston County. } *To the Clerk of the Inferior Court of said County.*

Let an execution of *fieri facias* be issued, to be levied of the property described in the within (or above) Mortgage, *five hundred dollars* principal debt, *thirty dollars* interest, (and all accruing interest,) and *five dollars* costs. Herein fail not.

*Witness my hand and official Signature.*

JOHN D. WINN, J. I. C.

### *Mortgage. Fi. Fa.*

STATE OF GEORGIA, }  
Houston County. } *To all and singular the Sheriffs of said State.*

We command you, that of a certain *Negro man named Jacob*, of *yellow complexion, twenty years of age, five feet ten inches high*, the property

of *John Doe* of said County, you cause to be made the sum of *five hundred dollars* principal, *thirty dollars* interest up to this date (and all accruing interest,) and *five dollars* costs. Which sums *Richard Roe* lately recovered against said *John Doe*, before the honorable *John D. Winn*, one of the Justices of the Inferior Court of said County, on the foreclosure of a Mortgage given by said *John Doe* to said *Richard Roe*, on said *Negro man Jacob*, by reason of the non-performance of certain promises by the said *John Doe* heretofore made, whereof the said *John Doe* is convicted and liable as appears to us from said Mortgage, the same bearing date the *first* day of *May*, eighteen hundred and *fifty-seven*. And have the said sums of money before the Inferior Court to be held at *Perry*, in and for said County, on the *fourth* Monday in July next, to render to said *Richard Roe* his damages, costs and charges aforesaid. And have you then and there this Writ.

Witness, the honorable *John D. Winn*, one of the Justices of said Court, this *January 2*, 1858.

JOHN H. KING, Clerk.

### *Defendant's Affidavit.*

STATE OF GEORGIA, } Personally appeared before the undersigned,  
*Houston County.* } *John Doe*, who being sworn, deposeth and saith,  
 that a Mortgage *fieri facias* lately issued by the Clerk of the Inferior Court of said County, against a certain *Negro man named Jacob*, the property of deponent, (which *fi. fa.* has been levied on said *Negro man*,) in favor of *Richard Roe*, for the sum of *five hundred dollars*, besides interest and cost, is proceeding illegally against deponent, for that deponent testifying says, that there is but the sum of *three hundred dollars* due on said Mortgage, deponent having paid *two hundred dollars* on said Mortgage.

Sworn to and subscribed,  
 before me, this *January 2*, 1858. }  
*James Mack, J. P.*

JOHN DOE.

### *Order by the Justice of the Inferior Court.*

STATE OF GEORGIA, }  
*Houston County.* } *To all and singular the sheriffs of said State.*

Whereas, on the *first* day of *January*, eighteen hundred and *fifty-eight*, *Richard Roe* appeared before the undersigned and made oath, that a Mortgage then had and held by him deponent, against *John Doe* (upon a certain *Negro man named Jacob*,) for the sum of *five hundred dollars*, besides interest and cost, was then due and unpaid. And whereas, an order was thereupon issued, directed to the Clerk of the Inferior Court, authorizing and commanding him to issue a writ of *fieri facias* against the Mortgaged property, for the sum sworn to be due; (which *fi. fa.* has been levied on the Mortgaged property.) And whereas, said *John Doe*, hath appeared before *James Mack*, a Justice of the Peace, and made oath that there is but the sum of *three hundred dollars* due on said Mortgage (and has given the bond required by law:) you are therefore, hereby commanded and required to postpone the sale of said *Negro man Jacob*, until further order in that behalf made, and return



said *fi. fa.* to the next Inferior Court to be held in and for said County, on the *fourth* Monday in *July* next.

*Witness my hand and official signature, at Chambers, this January 2, 1858.*

JOHN D. WINN, J. I. C.

*Bond given by the Defendant.*

STATE OF GEORGIA, { We, *John Doe* as principal, and *Charles Smith*  
Houston County. } as security, acknowledge ourselves held and bound to *Madison Marshall*, Sheriff of said County, the sum of *one thousand dollars*, subject to the following condition—

The condition of the above obligation is this: Whereas, said Sheriff, has levied a Mortgage *fi. fa.* in favor of *Richard Roe* against *John Doe*, issued by *John H. King*, Clerk of the Inferior Court, upon a certain *Negro man named Jacob*, the property mentioned in said Mortgage. And whereas, said *John Doe*, has filed his affidavit, denying that the amount for which said *fi. fa.* issued, is due. And whereas, an order has been issued by the honorable *John D. Winn*, one of the Justices of the Inferior Court of said County, postponing the sale of said Mortgaged property: now, should said *John Doe* well and truly return said *Negro man Jacob* when called for by said Sheriff, then the above obligation to be void; otherwise of force This *January 2, 1858.*

Approved—  
*James Mack, J. P.*

JOHN DOE, *principal*. [L. S.]  
CHARLES SMITH, *security*. [L. S.]

*Relinquishment where the debt is paid without Suit.*

STATE OF GEORGIA, { I, the within named *Richard Roe*, (or I, *Richard*  
Houston County. } *Roe*, Mortgagee, described in a certain Mortgage executed by *John Doe*, bearing date the *first* day of *May*, eighteen hundred and *fifty-seven*,) do hereby acknowledge full satisfaction of the debt, to secure the payment of which said Mortgage was executed. In consideration of which, I hereby relinquish all right and title to the property in said Mortgage conveyed.

In testimony whereof I have hereunto set my hand and affixed my seal, this *January 2, 1858.*

Signed, sealed and delivered, }  
in presence of  
*John Stone,*  
*James Mack, J. P.* }

RICHARD ROE, *Mortgagee*. [L. S.]

AN ACT to amend the eighteenth section of the act passed on the sixteenth of February, 1799, entitled “an act to revise and amend the Judiciary System of this State.”—*Approved Dec. 21, 1839.*

Agent or At- 542. SEC. 1. *Be it enacted*, That from and after the passage of this act, torney may mortgages upon personal property may be foreclosed upon the affidavit of the foreclose. agent, or attorney-in-fact, or at law, of the person or persons holding such mortgage, as to the amount due.

M'tg'ge where 543. SEC. II. All such mortgages shall be foreclosed and execution issue, foreclosed. in the county where the mortgagers reside at the time of the execution of the same, if residents of this State.

NOTE.—There are several very important provisions, bearing an intimate connection

with this subject, particularly "An act to compel the purchasers of Mortgaged Property; purchasers of Life-Estates, or Estates-for-term-of-years in Personal Property, at Sheriffs', Coroners' or Constables' sales to give Bond," for which the reader is referred to the title *Sheriff and Deputy*.

## HABEAS CORPUS.

544. SEC. VII. The judges of the superior courts, or any one of them, and By whom the the justices of the inferior courts, or any of them, in the absence of the judges Writ of Habe- of the superior courts, shall have power to issue writs of *habeas corpus*; and as *Corpus* may in all cases, to discharge, admit to bail, or remand to jail, any prisoner, accord- be granted. ing to their discretion and the law of the land: *Provided* that in all cases of a capital nature, where a writ of *habeas corpus* shall be issued by a justice of the inferior court, it shall be necessary that one or more of the justices of such inferior court, shall associate with the justice granting the same, at the return thereof; and a majority of such justices shall concur in opinion, on any decision or order aforesaid. And it shall be the duty of such justices to attend, on one day's notice being given of the time and place of the return of such writ.—[*And see 565.*]

AN ACT for the better securing the liberty of the Subject, and for prevention of Imprisonment beyond the seas.—*Approved A. D. 1678.*

*Whereas*, great delays have been used by Sheriffs, Jailers, and other Officers, to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of *habeas corpus* to them directed, by standing out an alias and *pluries habeas corpus* and sometimes more; and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land; whereby many of the King's subjects have been, and hereafter may be, long detained in prison; in such cases where by law they are bailable, to their great charges and vexation.—

545. II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters: *Be it enacted* That whensoever any person or persons shall bring *habeas corpus*, directed unto any sheriff or sheriffs, jailer, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the jail or prison, with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officer, under-keepers or deputies, shall within three days after the service thereof, as aforesaid, (unless the commitment aforesaid, were for treason or felony, plainly and specially expressed in the warrant of commitment,) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given (by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way) make return of such writ, and bring or cause to be brought, the body of the party so committed or restrained, unto or before the lord-chancellor, or lord-keeper of the great seal of England, for the time-being; or the judges or barons of the said court from whence the said writ shall issue; or unto and before such other person or persons before whom the said writ is

The Writ must be returned within 3 days with the body of the person, if within 20 miles, etc.

Prisoner must pay charges



- Officer must certify cause of Imprisonment, etc. made returnable, according to the command thereof. And shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing. And if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery aforesaid, and not longer.
- Writs how to be marked. 546. III. And to the intent that no sheriff, jailer or other officer may pretend ignorance of the import of any such writ: *Be it enacted*, That all such writs shall be marked in this manner, *Per statutem tricessimo, pimo, Coroli secundi regis*, and shall be signed by the person that awards the same.
- Writs in vacation. And if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation-time and out of term, it shall and may be lawful to and for the person or persons so committed or detained, (other than persons convicted or in execution, by legal process,) or any one on his or their behalf, to appeal or complain to the lord-chancellor or lord-keeper, or any of his majesty's justices, either of the one bench or the other, or the barons of the exchequer of the degree of the coif. And the said lord-chancellor, lord-keeper, justices, or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise, upon oath made, that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing, by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus*, under the seal of such court, whereof he shall then be one of the judges; to be directed to the officer or officers in whose custody the party so committed or detained, shall be; returnable *immediate* before the said lord-chancellor or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif, of any of the said courts; and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the time respectively before limited, bring such prisoner or prisoners, before the said lord-chancellor or lord-keeper, or such justices, barons, or one of them, before whom the said writ is made returnable; and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon, within two days after the party shall be brought before them, the said lord-chancellor or lord-keeper, or such justice or baron before whom the prisoner shall be brought, as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the court of king's bench the term following; or at the next assizes, sessions or general jail delivery of and for such county, city or place where the commitment was, or where the offence was committed; or in such other court where the said offence is properly cognizable, as the case shall require. And then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made.
- Copy of Warrant of Commitment must accompany the application, or affidavit be made why it is not. Unless it shall appear unto the said lord-chancellor, or lord-keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the
- Shall grant the Writ. How to be directed.
- Prisoner to be discharged upon recognizance.
- Papers to be returned. Unless the Commitment shows that the case is not bailable.



peace, for such matters or offences for the which, by the law, the prisoner is not bailable.

547. IV. *Provided always, and be it enacted*, That if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation time, in pursuance of this act.

Writ when not to be granted in vacation.

548. V. *And be it further enacted*, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners, according to the command of the said writ, within the respective times aforesaid; or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head-jailers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence, forfeit to the prisoner or party grieved, the sum of one hundred pounds, and for the second offence, the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office. The said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster; wherein no essoin, protection, privilege, injunction, wages of law or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance. And any recovery or judgment, at the suit of any party grieved, shall be a sufficient conviction, for the first offence; and may [*any*] after recovery or judgment, at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person, within the said penalty, for the second offence.

Liability of Officer neglecting or refusing to do his duty under this act.

549. VI. And for the prevention of unjust vexation by reiterated commitments for the same offence: *Be it enacted*, That no person or persons which shall be delivered, or set at large upon any *habeas corpus*, shall at any time hereafter, be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause. And if any other person or persons shall knowingly, contrary to this act, re-commit or imprison, or knowingly procure or cause to be re-committed or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of five hundred pounds; any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Person discharged under *Habeas Corpus*, not to be re-committed for same offence.

550. VII. *Provided always, and be it further enacted*, That if any person or persons shall be committed for high-treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or the first day of the sessions of oyer and terminer and general jail-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general jail-delivery, after such commitment, it shall and may be lawful to and for the judges of the court of king's bench and justices of oyer and terminer or general jail-delivery, and they are hereby required, upon motion to them made in open court, the last day of the term, sessions or jail-delivery, either by the prisoner or any one in his behalf, to set at liberty [*the prisoner*] upon bail, unless it

Person committed for Treason or Felony, shall be indicted the next term, or let to bail.



appear to the judges and justices, upon oath made, that the witnesses for the king could not be produced the same term, sessions or general jail-delivery. And if And tried the term after or discharged. any person or persons, committed as aforesaid, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer and general jail-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general jail-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

This act does not extend to civil matters. 551. VIII. *Provided always*, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody, according to law, for such other suit.

Prisoner not to be removed from one Prison to another, but according to law. 552. IX. *Provided always, and be it enacted*, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless it be by *habeas corpus* or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common jail; or where any person is sent by order of any judge of assize, or justice of the peace, to any common work-house or house-of-correction; or where the prisoner is removed from one prison or place to another, within the same county, in order to his or her trial or discharge, in due course of law, or in case of sudden fire or infection, or other necessity. And if any person or persons, shall after such commitment aforesaid, make out and sign or countersign any warrant or warrants, for such removal aforesaid, contrary to this act, as well he that makes or signs or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before-mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid, by the party grieved.

Penalty for denying *Habeas Corpus*. 553. X. *Provided also, and be it further enacted*, That it shall and may be lawful to and for any prisoner and prisoners, as aforesaid, to move and obtain his or their *habeas corpus*, as well out of the high court of chancery, or court of exchequer, as out of the courts of king's bench or common pleas, or either of them. And if the said lord-chancellor or lord-keeper, or any judge or judges, baron or barons, for the time being, of the degree of the coif, of any of the courts aforesaid, in vacation-time, upon view of the copy or copies of the warrant or warrants of commitment or detainer; or upon oath made that such copy or copies were denied, as aforesaid, shall deny any writ of *habeas corpus*, by this act required to be granted, being moved for, as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of five hundred pounds, to be recovered in manner aforesaid.

Where the Writ runs. 554. XI. *And be it declared and enacted*, That an *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque ports, or other privileged places within this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, and the islands of Jersey or Guernsey. Any law or usage to the contrary notwithstanding.

Subjects not to be sent to foreign prisons. 555. XII. And for preventing illegal imprisonments in prisons beyond the seas: *Be it further enacted*, That no subject of this realm, that now is, or hereafter shall be, an inhabitant or resident of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall or may be



sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands or places beyond the seas, which are, or at any time hereafter, shall be within or without the dominions of his majesty, his heirs or successors; and that every such imprisonment is hereby enacted and adjudged to be illegal. And that if any of the said subjects, now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment, maintain by virtue of this act, an action or actions of false imprisonment, in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act; and against all or any person or persons that shall frame, contrive, write, seal or countersign, any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them. And the plaintiff in every such action shall have judgment to recover his treble costs, besides damages; which damages so to be given, shall not be less than five hundred pounds. In which action no delay, stay or stop of proceeding, by rule, order or command; nor no injunction, protection or privilege whatsoever, nor any more than one imparlance, shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause, to be expressed in the said rule. And the person or persons who shall knowingly, frame, contrive, write, seal or countersign, any warrant for such commitment, detainer or transportation; or shall so commit, detain, imprison or transport any person or persons, contrary to this act; or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth, to bear any office of trust or profit, within the said realm of England, dominion of Wales, or town of Berwick-upon-Tweed, or any of the islands, territories or dominions thereunto belonging; and shall incur and sustain, the pains, penalties and forfeitures limited, ordained and provided, in and by the statute of provision and *præmunire*, made in the sixteenth year of king Richard the second; and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

The penalty.

556. XIII. *Provided always*, That nothing in this act shall extend to give benefit, to any person who shall, by contract in writing, agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

Except persons contracting.

557. XIV. *Provided always, and be it enacted*, That if any person or persons, lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or any thing therein contained, to the contrary notwithstanding.

Convicts may be transported.

558. XV. *Provided also, and be it enacted*, That nothing herein contained, shall be deemed, construed or taken, to extend to the imprisonment of any person, before the first day of June, one thousand six hundred seventy and nine; or to any thing advised, procured or otherwise done, relating to such imprisonment. Any thing herein contained, to the contrary notwithstanding.

Time when this act began to operate.

559. XVI. *Provided also*, That if any person or persons, at any time resident in this realm, shall have committed any capital offence in Scotland or Ireland, or any of the islands, or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or

Persons to be sent for trial to the place where the offence was committed.



persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this act. Any thing herein contained, to the contrary notwithstanding.

Time within which suits under this act must be brought. 560. XVII. *Provided also, and be it enacted*, That no person or persons shall be sued, impleaded, molested or troubled, for any offence against this act, unless the party offending be sued or impleaded for the same, within two years at the most, after such time wherein the offence shall be committed, in case the party grieved shall not then be in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

After the Assizes proclaimed, no Prisoner to be removed but by the Judge. 561. XVIII. And to the intent no person may avoid his trial at the assizes or general jail-delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there. *Be it enacted*, That after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common jail upon any *habeas corpus* granted in pursuance of this act, but upon any such *habeas corpus*, shall be brought before the judge of assize, in open court, who is thereupon to do what to justice shall appertain.

Assizes over, may have *Hab. Corpus*. 562. XIX. *Provided nevertheless*, That after the assizes are ended, any person or persons detained, may have his or her *habeas corpus*, according to the direction and intention of this act.

Defendants may plead the General Issue. 563. XX. *And be it also enacted*, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same; which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action; and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar or discharge of such information, suit or action.

Persons committed as accessories-before-the-fact, to petty-Treason or Felony, shall not be removed or bailed otherwise than before this act. 564. XXI. And because many times persons charged with petty-treason or felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according to the circumstances making out that suspicion, are more or less weighty, which are best known to the justices of the peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county: *Be it therefore enacted*, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory-before-the-fact, to any petty treason or felony, or upon suspicion thereof; or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

AN ACT to amend the seventh section of an act, entitled "an act to amend an act entitled an act to revise and amend the Judiciary System of this State, passed the 16th day of February, 1799." And to provide for opening and adjourning the several Courts of Ordinary in this State, in certain cases.—*Approved Dec. 20, 1823.*

Majority of J. I. C. necessary to act on return of *Hab. Corpus*. 565. From and after the passage of this act, it shall not be lawful for any one or more of the justices of the inferior courts of this State, to discharge or admit to bail, any person under a writ of *habeas corpus*, unless a majority of the justices of said court shall concur in opinion.

AN ACT to authorize and empower the Justices of the Inferior Courts of this State, to discharge Criminals or Offenders against the law, from Jail, in certain cases. And also, to discharge defendants in certain civil cases.—*Approved Dec. 29, 1847.*

*Whereas*, it sometimes happens that Criminals and Offenders against the law, are sentenced to imprisonment in the common Jail, for a definite period and until all Costs are paid by said Criminal or Offender. *And whereas*, it may happen that the Criminal or Offender so sentenced is unable to pay the Costs, the consequence of which is a perpetual imprisonment of the Criminal or Offender, at the expense of the County in which he may be imprisoned; for remedy whereof—

566. SEC. I. *Be it enacted*, That from and after the passage of this act, when any criminal or offender against the laws of this State, shall be so confined in any of the jails thereof, under a sentence of imprisonment for a definite period and until all costs are paid, and the said criminal or offender, after the time of his imprisonment shall have expired, shall be unable to pay the costs, it shall and may be lawful for the justices of the inferior court of the county, in their discretion, (the whole court therein concurring) where such criminal or offender against the law, may be confined, to discharge him from such confinement. [*See next Act.*]

Persons unable to pay Jail Fees may be discharged.

567. SEC. II. If any person or persons be imprisoned in the common jail of any county in this State, on a mesne or final process for debt; if the plaintiff in suit or execution, his agent or attorney, does not pay up, at the end of each and every week, the jail fees which have accrued, then and in that case, the inferior court may, and they are hereby authorized, to discharge the defendant or defendants, by writ of *habeas corpus*.—[*See Insolvent Debtor.*]

Jail Fees not paid, Defendant may be discharged.

SEC. III. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT defining how many Justices of the Inferior Courts of this State, shall concur in opinion, to make the Judgment of said Court.—*Approved Dec. 22, 1857.*

568. SEC. I. That from and after the passage of this act, in all cases brought before the justices of the inferior courts of this State, a majority of the justices presiding upon the trial of the same, shall pronounce the judgment; which judgment shall be binding, and as effectual as if a majority of the whole court were present and agreeing thereto.

Majority of the Inferior Courts sufficient.

SEC. II. [Repeals conflicting laws.]

AN ACT to require persons applying for a Writ of *Habeas Corpus ad subjiciendum*, in any State-case, to give the Prosecutor notice of the time and place, when said application will be heard.—*Approved Jan. 22, 1852.*

569. SEC. I. *Be it enacted*, That from and after the passage of this act, that no court shall sit upon and determine any application for a writ of *habeas corpus ad subjiciendum*, in any case, unless the applicant for said writ, or his attorney-at-law, shall have previously given timely notice to the prosecutor, or his attorney, of the time and place of the meeting of the court, to determine upon said application: *Provided*, said prosecutor, or his attorney, resides in the county where the person is confined.

Notice of application for *Habeas Corpus* must be given to Prosecutor.

SEC. II. That all laws militating against this act, be and the same are hereby repealed.



*Petition for the Writ under the Statute.*

STATE OF GEORGIA, } To the honorable *John H. Ragin*, one of the  
*Houston County.* } Justices of the Inferior Court of said County.

The complaint and petition of *John Doe*, sheweth, that he now is, and for *many days last past*, has been confined and holden in imprisonment, without law or right, in the common Jail of said County, by *Richard Roe*, Jailer, of said County, (as will more fully appear from an examination of the accompanying copies of the Warrant of Arrest, and the Warrant of Commitment,) charged with the supposed crime of *Assault and Battery*. Wherefore, Petitioner prays your honor to issue the State's Writ of *Habeas Corpus ad Subjiciendum*, that Petitioner, together with the cause of his caption and detainer, may be brought before your honor, to the end that what appertains to justice may be done. And your Petitioner will ever pray, &c. This *May 1, 1859*.

JAMES A. PRINGLE, *Pet'r's Att'y.*

*Affidavit if the Officer refuses Copies of the Warrant, etc.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
*Houston County.* } Justice of the Peace, in and for said County, *John Jones* and *John Smith*, who, being duly sworn, say that they were present, on yesterday, the thirtieth day of April, of the present year, when *John Doe*, now confined in the common Jail of said County, applied to *Richard Roe*, Jailer of said County, for copies of the Warrant of Arrest, and the Warrant of Commitment, and other papers, against him, the said *John Doe*, when said *Richard Roe*, refused, wholly and entirely, to furnish said *John Doe* with said copies, so demanded.

Sworn to and subscribed,  
 before me, this *May 1, 1859*.  
*James Mack, J. P.*

JOHN JONES.

JOHN SMITH.

NOTE.—If, upon application to the Jailer, copies of the proceedings be furnished, the above Affidavit is unnecessary and should be omitted.

*Notice to the other Justices.*

STATE OF GEORGIA, } To the honorable *Charles Anderson*, *John D.*  
*Houston County.* } *Winn*, *William F. Postell* and *Henry M. Holtzclaw*,  
 Justices of the Inferior Court of said County.

Whereas, *John Doe* is now confined in the common Jail of said County, and has, this day, made application to me for the Writ of *Habeas Corpus ad Subjiciendum*. And whereas, I have issued said Writ, returnable at ten o'clock on to-morrow morning, at *Perry*, in said County. You are, therefore, hereby requested to attend and associate upon the return of said Writ, at the time and place mentioned.

Witness my hand and official signature, this *May 1, 1859*.

JOHN H. RAGIN, J. I. C.

*The Writ of Habeas Corpus.*

STATE OF GEORGIA, }  
*Houston County.* } To *Richard Roe*, Jailer of said County—Greeting.  
 Whereas, *John Doe*, now confined in the Jail of said County, has

made his complaint, by Petition, to the undersigned, one of the Justices of the Inferior Court of said County, alleging that he is now unlawfully imprisoned, by you, the said *Richard Roe*, in the *common Jail* of said County, and praying for the State's Writ of *Habeas Corpus ad Subjiciendum*, to the end that he, with the cause of his imprisonment, may be brought before me and my associate Justices, that what appertains to justice may be done; as by said complaint of the said *John Doe*, dated the *first day of May*, 1859, appears. These are, therefore, by the authority of the State of Georgia, to command you, on *to-morrow*, by *ten o'clock* in the forenoon, to bring the body of the said *John Doe* before the Justices of the Inferior Court of said County, at *Perry*, in said County, with the cause of his being detained and imprisoned by you. And him keep, subject to the order of the Court, in the premises.

*Witness my hand and official signature, this May 1, 1859.*

JOHN H. RAGIN, J. I. C.

*"By the Statute of the thirty-first of King Charles the Second."*

### *Return of the Jailer.*

STATE OF GEORGIA, } In obedience to the within Writ and by vir-  
   *Houston County.* } tue of the same, I have taken the body of the  
 within named *John Doe* from the *common Jail* in said County, and  
 have him at *Perry*, in said County, before the honorable *John H.*  
*Ragin, Charles D. Anderson and William T. Swift*, Justices of the In-  
 ferior Court of said County. And for the cause of his detention and  
 imprisonment in said Jail, I assign and state, that on the *tenth day of*  
*April last past*, said *John Doe* was brought and committed to the  
 said Jail, by *John Jacobs*, a Constable of said County, by virtue of a  
*Warrant of Commitment*, which is here produced. And I further state,  
 that the said Constable, at the time of the commitment of the said  
*John Doe*, left with me as Keeper of said Jail, the original Warrant  
 for the Arrest of said *John Doe*, charging him with the crime of *As-*  
*sault and Battery*, which warrant is also here produced. And the ex-  
 amination of said *John Doe* and the witnesses against him, taken be-  
 fore *James Mack*, one of the Justices of the Peace in and for said  
 County, which is also here produced. I therefore, assign the  
 premises aforesaid, as the causes of the detention and imprisonment of  
 the said *John Doe*, in said Jail. All of which is respectfully submit-  
 ted, this *May 2*, 1859.

RICHARD ROE, J. H. C.

### *Judgment of the Court.*

On the return of the *Habeas Corpus* of *John Doe*, and on the hearing thereof, it was made to appear to the Court that the *Warrant of Commitment* issued by *James Mack*, one of the *Justices of the Peace* for said County, against him the said *John Doe*, by which he was committed and detained in Jail, by *Richard Roe*, Jailer of said County, was defective and insufficient in this, to wit, that said *Warrant of Commitment* did not state the *time and place*, of the committing of the said



crime of *Assault and Battery* with which said *John Doe* was charged and held in prison. It is, therefore adjudged, that the said *Warrant of Commitment* is insufficient to detain said *John Doe* in prison; and thereupon, it is ordered, and this Court doth order, the said *John Doe* to be dismissed, and he is hereby discharged from said imprisonment. And the said *Jailer* of said County, is hereby ordered to release him accordingly. This *May 2*, 1859.

JOHN H. RAGIN, J. L. C.

CHARLES ANDERSON, J. L. C.

WM. T. SWIFT, J. L. C.

### *Habeas Corpus at Common-Law.*

NOTE.—The writ of *Habeas Corpus* at common-law, extends to all cases of illegal Confinement, whether in a public prison or elsewhere. “The following are some of the cases in which the writ at common-law has issued. For a young lady decoyed away from her father—for a wife confined by her husband—at the instance to have his wife brought up who is in the custody of some other person, although there may be articles of separation between them, but not to put her in his possession. And if she is so confined that she cannot make affidavit, the Writ shall go without affidavit, to bring her up that she may make it. At the instance of a father for his son, in the custody of his aunt—and at the instance of a father for his daughter, aged eighteen, who was a kept mistress. Where it was alleged that the prisoner was mad, the Court ordered an inspection by her nearest relation, her attorney and a physician, and also judged from its own view in Court.”—*Prin. Dig.* 919.

In *Habeas Corpus* at common-law “the Courts are not bound by the return to the Writ, but they may discharge the Prisoner if it should appear by the most manifest proof that his detainer is most unwarrantable and in direct violation of law.”—*Bac. Abr.*

The Writ at common-law must be supported by Affidavit.

“Whenever a person is imprisoned by any person whatsoever, whether he be one concerned in the administration of justice, as a Sheriff, Jailer, etc.; or a private person, the Writ must be directed to him.”—*Bac. Abr.*

“In this State, the Petition for a Writ of *Habeas Corpus* must be directed and made to the Judge of the Superior Court; or, in his absence, to the Justices of the Inferior Court, or one of them.”—*Sch. Dig.*

### *Petition for the Writ at Common-Law.*

STATE OF GEORGIA, } To the honorable *Charles Anderson*, one of the  
*Houston* County. } Justices of the Inferior Court of said County.

The complaint and petition of *John Doe*, sheweth, that your Petitioner is the legitimate father of *William Doe*, a Minor of the age of fifteen years. That now and for some time past, *Richard Roe* of said County, has taken and keeps in his possession and control, away from your Petitioner, without lawful warrant or authority, the person of the said *William Doe*, son of your Petitioner, as aforesaid. Your Petitioner avers, that he has frequently applied to said *Richard Roe*, and has endeavored to induce him, by persuasion and demand, to deliver to your Petitioner, the person of him the said *William Doe*; notwithstanding, said *Richard Roe* fails, neglects and refuses so to do; wherefore, Petitioner prays your honor to grant to your Petitioner, the State's Writ of *Habeas Corpus* at common-law, directed to the said *Richard Roe*, commanding and requiring him, to produce the person of him the said *William Doe*, before your honor, at such time and place, as to your honor shall seem meet and proper, to the end, that what appertains to justice may be done. And your Petitioner will ever pray, etc.

JOHN M. GILES, *Pet'r's Att'y.*

In person, appeared before the undersigned, a *Justice of the Peace* in and for said County, *John Doe*, the Petitioner in the above and foregoing Petition named, who being duly sworn saith, that the facts in the above Petition stated, are true, to the best of his knowledge and belief.

Sworn to and subscribed,  
before me, this *May* 1, 1859.  
*James Mack, J. P.*

JOHN DOE.

NOTE.—The other proceedings are the same as when the Writ is issued under the Statute.

## INTEREST AND USURY.

AN ACT to establish an uniform mode of calculating Interest in this State, and to prevent the collection of Compound Interest.—*Approved Nov. 23, 1814.*

*Whereas*, it is just and equitable that there shall be an uniform and definite mode practised throughout the State, for calculating Interest—

570. SEC. I. *Be it enacted*, That in future, the mode of calculating interest in this State, shall be at and after the rate of eight per cent. per annum [7 per cent.—*See next Act.*] And whenever any payment shall be made on any note, bond, or other instrument; demand, execution, or judgment; where any interest has accrued on any such note, bond, or other instrument, execution, or judgment, such payment, shall in the first place, be applied to the discharge of interest due; and no part of the principal shall be considered as discharged until the interest shall have been first extinguished: *Provided nevertheless*, that in all cases where the payment made shall not be sufficient to discharge all the interest due, at the time of the payment, no interest shall, at any future payment, be calculated on the balance of interest which was left unpaid.

Rate of Interest.

Payments go first to the discharge of Interest.

No Interest on remaining interest.

571. SEC. II. In all cases where judgments may hereafter be obtained, all such judgments shall be entered up for the principal sum due with the interest, but no part of such judgment shall bear interest, except the principal which may be due on the original debt. Any law, usage, custom or practice, to the contrary notwithstanding.

Judgments draw Interest only on the principal.

AN ACT to alter the law in relation to Interest on Money.—*Approved Dec. 17, 1845.*

572. SEC. I. *Be it enacted*, That all contracts, bonds, notes and assurances whatsoever, made after the passage of this act, by or with an incorporated bank, or any other person or persons, whether natural or artificial, for the payment of any principal, on money, goods, wares, or merchandise, or other commodities whatsoever, to be lent, covenanted, to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of seven per centum per annum, shall be void and of no effect, except so far as to authorize the recovery of the principal due thereon, and no more.—[*But see next Act.*]

Interest seven per cent. Contracts for more declared to be usurious, and the Interest forfeited.

573. SEC. II. Any judgment hereafter rendered, in any court of this State, shall bear interest, so far as regards the principal debt, at the same rate as that borne by the contract upon which such judgment may be obtained.

Interest on Judgment same as on contract.

AN ACT to alter and amend “an act to alter the law in relation to Interest on Money,” approved 17th December, 1845.—*Approved March 3, 1856.*



Principal sum  
and legal In-  
terest may  
be recovered  
at law.

574. SEC. I. *Be it enacted*, That all contracts, bonds, notes, and assurances whatsoever, made after the passage of this act, by or with an incorporated bank, or any other persons, whether natural or artificial, for the payment of any principal, or money, goods, wares or merchandize, or other commodities whatsoever, to be lent, covenanted, to be performed upon; or for any usury, whereupon or whereby there shall be recovered [received] or taken, above the rate of seven per centum per annum, shall be void and of no effect, except so far as to authorize the recovery of the principal and legal interest due thereon, and no more; it being the intent and meaning of this act, that the usurious interest shall be made void, in all cases where usury shall be received or taken, and shall not be recovered; but, that in all such cases, the principal and legal interest shall and may be recovered. And that all laws, &c. militating against this act, be and the same are hereby repealed.

*The following Table will exhibit the Rate of Interest in the several States forming the Union.*

1. Maine, six per cent.	New Eng. States.	19. Louisiana, six per cent.	Sth North West States.
2. New Hampshire, six per cent.		20. Texas, eight per cent.	
3. Vermont, six per cent.		21. Ohio, six per cent.	
4. Massachusetts, six per cent.		22. Indiana, six per cent.	
5. Rhode Island, six per cent.		23. Illinois, six per cent.	
6. Connecticut, six per cent.	Middle States.	24. Michigan, seven per cent.	South W. States.
7. New York, seven per cent.		25. Wisconsin, seven per cent.	
8. New Jersey, six per cent.		26. Iowa, seven per cent.	
9. Pennsylvania, six per cent.		27. Missouri, six per cent.	
10. Delaware, six per cent.		28. Kentucky, six per cent.	
11. Maryland, six per cent.	Southern States.	29. Arkansas, six per cent.	Pacific States.
12. Virginia, six per cent.		30. Tennessee, six per cent.	
13. N. Carolina, six per cent.		31. California, (no law.)	
14. S. Carolina, seven per cent.		32. Oregon.	
15. Georgia, seven per cent.			
16. Alabama, eight per cent.			
17. Florida, six per cent.			
18. Mississippi, six per cent.			

On Debts, or Judgments in favor of the United States; Interest six per cent.

AN ACT to compel parties Plaintiffs, in the several Courts of this State, where the Plea of Usury is filed, to discover, on oath, the truth or falsehood of the facts stated in such Plea; or to allow the Defendant, in case of refusal by the Plaintiff, to establish the facts contained in such Plea, by his own oath; without a Bill for Discovery.—*Approved Dec. 28, 1842.*

Upon the plea  
of Usury  
being filed,  
and Notice  
given, Plain-  
tiff to make  
affidavit of the  
truth of the  
Plea.

575. SEC. I. *Be it enacted*, That from and after the passage of this act, that in all cases, in the several courts in this State, when the plea of usury shall be pleaded, the party plaintiff in such case, upon notice of such plea, accompanied by a copy of such plea; and which shall be served upon said plaintiff, his agent or attorney, within one month from the filing of such plea of the case, (in the superior or inferior court, and within ten days, if the case is in any justices' court, or any other court,) discover on oath, by his written affidavit, to be made before some officer legally authorized to administer an oath, whether the fact or facts set forth in said plea are true as to the usury; and whether or not, the contract upon which said suit is brought, was usurious; and such written affidavit may be read in evidence on the trial of said case, by either party.

Should the  
Plaintiff fail,  
the Defendant  
may make affi-  
davit.

576. SEC. II. If any party plaintiff shall fail or refuse to make the discovery, as provided in the first section of this act, that the party defendant in said case, may make an affidavit in writing, before any officer authorized to administer an oath, of the truth of the facts set forth in his plea, as to the usury therein pleaded, and said affidavit of the defendant, may be read on the trial by either party to said case.

577. SEC. III. The party, where affidavit is used as evidence, as provided in the first or second sections of this act, shall be put upon the stand, and cross-examined by the other party, as other witnesses. Party swearing may be cross-examined.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to collect Interest on Open Accounts, in this State, after they are due. And to fix the time when Accounts shall fall due, where the same is not agreed upon by the Parties.—*Approved Dec. 10, 1858.*

578. That all accounts, in this State, made after the first day of January next, shall be held and considered as becoming due on the first day of January next after such accounts are made, unless a different day is agreed upon by the parties. And that all accounts, after becoming due, as aforesaid, shall draw interest at seven per cent. per annum; and shall be placed upon the same footing, as regards interest, that liquidated demands are. Open Accounts when considered due. Interest allowed upon them.

II. [Repeals conflicting laws.]

### LIMITATION OF ACTIONS.

AN ACT limiting the time in which Suits in the Courts of Law, in this State, must be brought; and also, limiting the time in which Indictments are to be found and prosecuted, in certain cases; and for other purposes therein mentioned.—*Approved March 6, 1856.*

579. SEC. I. All suits for the recovery of real estate, shall be brought within seven years after adverse possession commences, and not after; but no possession shall be considered adverse unless evidenced by written evidence of title; nor shall any forged or fraudulent title be evidence of adverse possession. Real Estate. Adverse possession.

580. SEC. II. All suits for the recovery of personal property; or for damages for the conversion or destruction of the same, shall be brought within four years after the right of action accrues, and not after. Personal Property.

581. SEC. III. All suits for trespasses upon, or damages to real estate, shall be brought within four years after the right of action accrues, and not after. Trespass to Real Estate.

582. SEC. IV. All suits for injuries to personal property, shall be brought within four years after the right of action accrues, and not after. Injuries to Personal Property.

583. SEC. V. All suits for injuries done to the person, shall be brought within two years after the right of action accrues, and not after. Injuries to the Person.

584. SEC. VI. All suits for injuries done to the character or reputation, shall be brought within one year from the time the right of action accrues, and not after.

585. SEC. VII. All suits upon judgments obtained out of this State, shall be brought within five years after such judgment shall have been obtained, and not after. Foreign Judgments.

586. SEC. VIII. That no judgment hereafter obtained in the courts of this State, shall be enforced after the expiration of seven years from the time of its rendition, when no execution has been issued upon it; and when execution has been issued, after the expiration of seven years from the time of the last entry upon the execution, made by the officer authorized to execute and return the same; but all such judgments shall be held and taken as fully satisfied and paid. Domestic Judgments when extinct, etc.

587. SEC. IX. That all suits for the recovery of promissory notes, or other acknowledgments of indebtedness, under the hand of the party, shall be brought Promissory Notes, etc.



within six years after such promissory notes, or acknowledgments of indebtedness became due, and not after.

Open Acc'ts; 588. SEC. X. All suits for the recovery of open accounts, or damages for  
Damages for the breach of any contract, not under the hand, or [*not*] under the hand and  
breach of Con- seal of the party sought to be charged, shall be brought within four years, next  
tract, etc. after the right of action accrues, and not after.

Bonds and In- 589. SEC. XI. All suits brought upon bonds, or other instruments under  
struments un- seal, shall be brought within twenty years after the right of action accrues,  
der seal. and not after; but no instrument shall be considered sealed, unless so recited  
in the body of the instrument.

Rights under 590. SEC. XII. All suits for the enforcement of rights accruing to individ-  
statutes, etc. uals, under statutes, acts of incorporation, or by operation of law, shall be  
brought within twenty years after the right of action accrues, and not after.

Dower. 591. SEC. XIII. That when any widow shall be entitled to dower, applica-  
tion for the assignment of such dower, shall be made by said widow, within  
seven years from the time such right to dower accrued, and not after.

Will. 592. SEC. XIV. That all proceedings requiring a will to be proven, in  
selemn form, or for setting aside and revoking the probate of a will, already  
granted, shall be commenced within seven years after said will shall have been  
admitted to record, and not after.

Bill of Review. 593. SEC. XV. That all bills brought to review a decree of a court of  
equity, shall be brought within three years after such decree was rendered,  
and not after.

*Certiorari.* 594. SEC. XVI. All writs of *certiorari* shall be allowed and brought within  
six months [*three months*] from the time [*the*] judgment sought to be reversed  
was rendered, and not after.

Legacies and 595. SEC. XVII. All suits for the recovery of legacies and distributive  
Distributive shares, and against those who are or have been guardians, for the recovery of  
Shares. property or money which has come to their hands as guardians, shall be  
brought within ten years next after the right of action accrues, and not after.

Other rights 596. SEC. XVIII. All other suits to which any person may be entitled, in  
of Action. the courts of law in this State, for the enforcement of rights, or redress of  
wrongs, not otherwise and not herein-before provided for, shall be brought within  
four years after the right of action accrues, and not after.

Limitation 597. SEC. XIX. That when any of the persons entitled to sue as aforesaid,  
when not to shall be married women, idiots, or lunatics, or imprisoned, or under the age  
operate ag't of twenty-one years at the time the cause of action accrues, such persons shall  
certain per- be entitled to sue, within the time aforesaid, after their respective disabilities  
sons. are removed.

When this 598. SEC. XX. That if after the right to sue commences, persons shall come  
statute ceases under any of the disabilities aforesaid, this statute shall cease to operate against  
to run. their rights, until such disabilities shall be removed: *Provided*, that no person  
who shall voluntarily take upon himself such legal disabilities, shall be entitled  
to the provisions of the foregoing section.

Rights of 599. SEC. XXI. That if any person to whom any right to sue as aforesaid,  
unrepresented shall accrue in his lifetime, shall depart this life before suit brought, the time  
Estates. or times within which suit is to be brought, under the previous sections of this  
act, shall not be computed against his right, from the time of his death, until  
there shall be a representation upon his estate. And when the right to sue,  
as aforesaid, shall not accrue until after the death of any person, the time  
within which suit is to be brought, under the provisions of this act, shall not  
begin to be computed until there is representation upon his estate: *Provided*,  
that in each of these cases, there be representation by an executor or adminis-  
trator, duly qualified, within five years from the death.

600. SEC. XXII. That where personal property shall be carried away or



secreted, so that the party entitled to sue for the same, knows not who is in possession of it, or where it is, or against whom to bring his suit, the limitation of time in which suits for the recovery of personal property are to be brought, by the provisions of this act, shall not begin to be computed against such party, until he has discovered where such property is, and who is in possession of it.

Not knowing whom to sue, statute does not run.

601. SEC. XXIII. That when any person against whom a right to sue exists, shall remove from this State, the times mentioned, in this statute, in which suits are to be brought, shall cease to be computed in his favor, from the time of such removal, and so continue, until he shall return, and fix his residence in this State.

Statute not to run in favor of party removing from the State.

602. SEC. XXIV. Where there is a joint right to sue, in favor of several persons, and some of them are under the disabilities mentioned in the 19th section of this statute, and others not, the times within which suits are to be brought, under the provisions of this statute, shall not begin to be computed until such disabilities are removed.

Joint right to sue, action stayed until disabilities removed.

603. SEC. XXV. That in all cases of contracts for the payment of money, or other valuable thing, when the time within which suits are to be brought, under the provisions of this act, shall have expired, no promise to pay the money, or other valuable thing, due upon such contract, or any part of it, shall be valid or binding upon the parties making it, unless the same shall be reduced to writing and signed by the party making such promise, or by some person authorized by them.—[See 621.]

New Promise must be in writing.

604. SEC. XXVI. That where contracts have been made by a co-partnership, and such co-partnership shall be afterwards dissolved, no promise made by one co-partner, after such dissolution, to pay a debt of said co-partnership, (that is or may be barred by the provisions of this act,) shall be obligatory upon the other partners; but shall only bind the partner making the same.

Co-partner after dissolution not bound upon the promise of his associate.

605. SEC. XXVII. In all cases of joint, or joint and several contracts, which have or may become barred by the provisions of this act, no promise made by one of the joint contractors to perform such contract, shall be binding upon the other contractors, but only upon the person making the promise.

Joint contractor not bound by the promise of his associate.

606. SEC. XXVIII. That in all cases where, by the laws now in force, a party may bring his suit, either in a court of equity, or a court of law, (and if he elects to bring his suit in a court of equity,) this statute shall affect his rights in the same manner as though he brought his suit in a court of law, and may be plead in the same manner.

Courts of Equity effected by this statute, the same as Courts of Law.

607. SEC. XXIX. That when any person has *bonâ fide* and for a valuable consideration, purchased real or personal property, and has been in possession of such real property for four years, and such personal property for two years, it shall be discharged of the lien of any judgment which may exist against the person from whom he purchased.

Lien by judgment barred after 4 years on real property and 2 years on person's property.

608. SEC. XXX. That when any person shall be entitled to any right of suit in consequence of the fraudulent act of another, the time limited for the commencement of suit, by the provisions of this act, shall not begin to be computed until the discovery of the fraud, by the party entitled to sue.

Suits in cases of Fraud, when to be commenced.

609. SEC. XXXI. That indictments for murder may be found and prosecuted at any time after the death of the person killed; in all other cases, when the punishment is death or perpetual imprisonment, the offender shall be indicted in the proper courts, within seven years next after the commission of the offence, and not after. In all other felonies, the offender shall be indicted, in the proper court, within four years next after the commission of the offence, and not after. In all other cases, when by law, the punish-

Indictment for Murder when prosecuted. In other cases of Homicide.

All other Felonies. Cases below Felony.



- ment is fine or imprisonment, or fine and imprisonment in the common jail of the county, offenders shall be indicted, in the proper court, within two years, next after the commission of the offence, and not after. But if any such offender shall abscond from the State, or so conceal himself that he cannot be arrested; or the offender shall be unknown; the time of his absence from the State, or his concealment, or of his being unknown, shall not be computed in the foregoing limitation.
- Offender absconding or concealing himself statute does not run. 610. SEC. XXXII. Where any person shall be guilty of acts, which by the laws now in force, subject the offender to any penalty, fine or forfeiture, and the time of suing or prosecuting such offender, is not otherwise provided for in this act, no action, suit or indictment shall be brought against such offender unless the same be brought within one year next after the offence shall have been committed.
- Offences not specially provided for, within what time to be prosecuted. 611. SEC. XXXIII. That when any suits shall be commenced within the times limited by this act, and the same shall be discontinued, dismissed, or the plaintiff non-suited, or judgment be arrested, during the pendency of such suit, the time within which such suit is to be brought, by the provisions of this act, shall expire; it shall be lawful for the plaintiff to renew said suit, at any time within six months after such termination of the case; but this right shall only extend to one renewal.
- Time within which suits may be renewed. Only one renewal allow'd. 612. SEC. XXXIV. That when any matter shall be pleaded as a set-off, in any suit, and said suit shall be dismissed, become non-suited, or judgment shall be arrested; or where such matter of set-off may be disposed of without a hearing upon the merits, such matter of set-off shall not be barred until the expiration of six months, next after the time of such dismissal, discontinuance or becoming non-suited.
- Set-off when and how barred. 613. SEC. XXXV. When any indebtedness exists, by open account, the time within which suit is to be brought for recovery of such accounts by the provisions of this act, shall commence to be computed from the first day of the year next after the contracting of said accounts, and not before that time.
- Time on Open Accounts. 614. SEC. XXXVI. In all cases when the right to sue is suspended by law, the time of such suspension shall not be computed in the limitations of this act.
- Right to sue suspended. 615. SEC. XXXVII. In all cases in this act, when the masculine gender is used, the feminine shall be included, when applicable to the case; and when the singular number is used, the plural number shall be included, when applicable to the case.
- Gender. Number. 616. SEC. XXXVIII. That when, by the provisions of this act, a private person would be barred of his rights, the State shall be barred of her rights, under the same circumstances.
- State affected by this Act. 617. SEC. XXXIX. That this act shall, in none of its provisions, interfere with the principles established in the courts of equity, in relation to laches, or stale demands; or the equitable bars, in cases brought to said courts.
- Cases in Equity, how affected. 618. SEC. XL. If after any administration, or letters testamentary granted, the executor or administrator dies, the statute shall cease to run until there shall be a legal representative of the estate, who can sue or be sued: *Provided*, a farther administration be granted, or letters testamentary agreed to, within the expiration of five years.
- Executor or Adm'r dying, statute does not run, etc. 619. SEC. XLI. That all acts and parts of acts, limiting the time within which suits are to be brought, in the courts of law, in this State; and also, limiting the time within which indictments are to be found and prosecuted; and also, all other acts or parts of acts, conflicting with the provisions of this act, be and the same are hereby repealed.
- Repealing section.

620. SEC. XLII. This act shall commence and be of force, from and after the first day of June next. When this act commences.

AN ACT to require all Promises, Acknowledgments and Admissions of Debts, made after the Statute of Limitations has commenced running, to be reduced to Writing; or some Note or Memorandum thereof, made in Writing and subscribed by the person or persons making the same, in order to revive said Notes or Debts.—*Approved Feb. 20, 1854.*

621. SEC. I. That from and after the passage of this act, no promise, acknowledgment or admission of a debt, made after the statute of limitations has commenced running, shall be sufficient to revive the same; unless such promise, acknowledgment or admission, shall be reduced to writing; or some note or memorandum thereof [be] made in writing, and subscribed by the person or persons making the same, or some other person thereunto, by him lawfully authorized: *Provided*, this act shall only operate upon and affect such promises, acknowledgments and admissions, as shall be made after its passage. Promises, etc., after being barred, must be in writing, or insufficient to charge party.

SEC. II. [Repeals conflicting laws.]

NOTE.—This Act was passed in 1854, and should have been published among the Acts of that year. The Compiler of the Acts of 1856 (amongst which the Act is found), makes this explanation: "This Act was passed during the session of the Legislature of 1853 and 1854, but not published in the volume of Laws, owing to its having been inadvertently mislaid in the Executive Department."

## PARTNERS AND PARTNERSHIPS.

AN ACT to authorize Limited Partnerships.—*Approved Dec. 22, 1837.*

622. SEC. I. *Be it enacted*, That limited partnerships, for the transaction of any mercantile, commercial, mechanical, manufacturing, mining or agricultural business, within this State, may be formed, by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking, or making insurance. Limited Partnerships allowed, but not for Banking or Insurance purposes.

623. SEC. II. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally, responsible as general partners; and of one or more persons who shall contribute, in actual cash, a specific sum, as capital, to the common stock, who shall be called special partners, and who shall not be liable for debts of the partnership, beyond the fund so contributed by him or them, to the capital, except as herein-after provided. General Partners. Special Partners, their liability, etc.

624. SEC. III. The general partners only shall be authorized to transact business, and to sign for the partnership, and to bind the same. Authority of General Partners.

625. SEC. IV. Persons desirous of forming such partnership, shall make, and severally, sign by themselves or attorney-in-fact, a certificate which shall contain—1st, the name of the firm under which such partnership is to be conducted—2d, the general nature of the business intended to be transacted—3d, the names of all the general and special partners inserted therein, distinguishing which are general and which are special partners, and their respective places of residence—4th, the amount of capital which each special partner shall have contributed to the common stock—5th, the period at which the partnership is to commence, and the Certificate, what it must contain.



Power-of-Att'y must be recorded. period at which it shall terminate. And when made by such attorney-in-fact, the power-of-attorney, duly authenticated, shall be recorded, along with such certificate.

Acknowledgment before Judge, etc., and certified by him. 626. SEC. V. The certificate shall be acknowledged by the several persons signing the same, or their attorney-in-fact, before a judge of the superior or inferior court, or a justice of the peace, or notary public; and such acknowledgment shall be certified by the officer before whom the same is made.

Certificate to be filed with the Cl'k Sup. Court, and recorded. Doing business in several Counties, must have transcript of Certificate recorded. Clerk's fees for recording. 627. SEC. VI. The certificate and power of attorney-in-fact, so acknowledged and certified, shall be filed in the office of the clerk of the superior court of the county in which the principal place of business of the partnership shall be situated; and shall also, be recorded by him, at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and power of attorney-in-fact, and of the acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded, in like manner, in the office of the clerk of the superior court, in every such county. And the clerk, for each and every registry required by this act, shall be entitled to the sum of five dollars.

Affidavit to be filed. Certified copy made evidence. 628. SEC. VII. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit or affidavits of the several general partners, shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith, paid in cash; and a certified copy of such certificate, and power-of-attorney, and affidavits, shall be evidence in all courts and places whatsoever.

Not observing all the preliminary requirements, parties to be considered as General Partners. 629. SEC. VIII. No such partnership shall be deemed to have been formed until such a certificate as is herein mentioned, shall have been made, acknowledged, filed and recorded; nor until an affidavit shall have been filed, as above directed. And if any false statement be made in such certificate or affidavit, or if such partnership be commenced before such certificate or affidavit is filed, all the persons interested in such partnership, shall be liable for all the engagements thereof, as general partners.

When and where the publication of the Partnership is to be made. Consequence of not publishing. 630. SEC. IX. The partners shall publish the terms of the partnership, when registered, for at least, six weeks, immediately after such registry, in one newspaper in the county in which the place of business is situated, and in one newspaper in the city of Milledgeville. If no newspaper should be published in the county in which the business is to be transacted, the notice shall be published in all the newspapers in the city of Milledgeville, as before required. And if such publication be not made within two months from the time of filing such certificate and affidavit, the partnership shall be deemed general.

Affidavit of Printer may be taken and filed. 631. SEC. X. The affidavits of the publication of such notice, by the printers, publishers or editors of the newspapers in which the same shall be published, may be filed in the office of the clerk of the superior court in which the certificate has been filed, and shall be evidence of the facts therein contained.

Renewals how effected. 632. SEC. XI. Every renewal or continuance of such partnerships, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded; and an affidavit of a general partner be made and filed, and notice be given, in the manner herein required, for its original formation. And every such partnership, which shall be otherwise renewed or continued, shall be deemed a general partnership.



633. SEC. XII. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall, in any manner, be carried on after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the last section.

Every material alteration, a dissolution of the partnership.

634. SEC. XIII. The business of the partnership shall be conducted under a firm, in which the names of the general partners only, shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, he shall be deemed a general partner.

Firm Name; business how conducted.

635. SEC. XIV. Suits to be brought by any partnership, to be formed under this act, shall be in the name or names of the general partners only; and suits against such partnership, shall be brought against the general partners only, except in such cases where the special shall be rendered liable as general partners; in which cases suits may be brought against all the partners, jointly or severally; or any one or more of the special partners may be sued in the same action with the general partners.

Suits for and against Partnerships.

636. SEC. XV. No part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid, or transferred to him, in the shape of dividends, profits, or otherwise, at any time, during the continuance of the partnership, but any partner may, annually, receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also, receive his portion of such profits, but shall not be liable for any debts previously contracted by the general partners.

No dividends to be paid out of the capital stock; but Spec'l Partner may receive lawful interest.

637. SEC. XVI. If it shall appear that by the payment of interest, or profits, to any special partner, the original capital has been reduced, or the firm shall be unable to pay its debts, the partner receiving the same shall be bound to restore the interest, or profits, received by him, necessary to make good his original share of the original stock.

Debts must be paid before Special Partner shall receive interest or dividends.

638. SEC. XVII. A special partner may, at any time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed, for that purpose, as agent or otherwise; if he shall interfere, contrary to these provisions, he shall be deemed a general partner, but he may act as attorney or counsellor-at-law, or in equity, for the partnership, without being liable to become a general partner.

Rights of Special Partner in several instances. May act as Att'y at Law.

639. SEC. XVIII. The general partners shall be liable to account to each other, and to the special partners for their management of the business of the firm, both in law and equity, as other partners now are by law and equity.

General Partners liable to account.

640. SEC. XIX. Every partner who shall be guilty of any fraud, in the affairs or business of the partnership, shall be liable, civilly, to the party injured, to the extent of his damage; and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the superior court, by which he shall be tried.

Partner guilty of fraud, liable civilly and criminally.

641. SEC. XX. Every sale, assignment, or transfer of any of the property, or effects, of such partnership, made by such partnership, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership; and every judgment confessed, lien created, or secu-

Sales, assignments, lien, etc., in contemplation of insolvency, void.



rity given, by such partnership, under the like circumstances and with the like intent, shall be void, as against the creditors of such partnership.

Sales made or  
liens created  
by individual  
Partners, in  
contemplati'n  
of insolvency,  
void. 642. SEC. XXI. Every such sale, assignment or transfer of any of the property or effects, of a general, (or special partner, who may have become liable as a general partner,) made by such general or special partner, when insolvent, or in contemplation of insolvency, or after; or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, every judgment confessed, lien created, or security given, by any such partner, under the like circumstances, and with like intent, shall be void as against the creditors of the partnership.

Special Part-  
ner, liable as  
General Part-  
ner. 643. SEC. XXII. Any special partner who shall violate any provision of the two last preceding sections, or who shall concur in or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Special Part-  
ner's claim  
postponed to  
other credi-  
tors. 644. SEC. XXIII. In case of the insolvency or bankruptcy of the partnership, no special partner, shall under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership, shall be satisfied.

Dissolution of  
Partnership,  
how perfected. 645. SEC. XXIV. No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its renewal, until a notice of such intended dissolution, shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published, at least, once a month for four weeks, in a newspaper printed in each of the counties where the partnership has places of business; but if no newspaper be printed in such counties, then the notice shall be published, for four weeks, in all the newspapers of the city of Milledgeville; which notice shall be signed by all the partners, or their representatives: *Provided*, that nothing herein contained shall be so construed as to affect the collection of any demand against either of the special partners, which may have been contracted previously to the commencement of such special partnership.

Demands  
against Spec'l  
Partner, not  
affected by  
this act.

AN ACT to prohibit persons who are Partners in Trade, or any kind of Business, from inserting, continuing or using, in their Partnership style and name, the name of any individual not actually a Co-Partner; and to prevent the collection of Debts due to any Partnership violating the provisions of this act; and to punish those who may violate the same.—  
*Approved Dec. 25, 1837.*

Name of per-  
son not a  
Partner, not  
to be used;  
but the name  
of retiring  
Partner may  
be used in  
collecting  
debts due the  
firm. 646. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall not be lawful for any persons who are partners in trade, or business of any kind, to insert or use in their partnership-firm, style and name, the name of any person not actually a co-partner with them, at the time his or her name, is so inserted or used; nor shall it be lawful to continue, in any partnership-firm, style, and name, the name of any individual partner, after he or she shall have retired from [*the*] partnership: *Provided*, that this act shall not be so construed, as to prevent the collection of debts due to any partnership, after its dissolution, (or after the retirement of any partner,) in the name previously used, in conformity with this act.

Penalty for  
violating this  
act. 647. SEC. II. Each and every individual violating the provisions of this act, shall forfeit and pay the sum of one hundred dollars, for each and every day such name may be used; to be sued for and recovered, by any person who may prosecute for the same.

AN ACT to authorize Partners, or persons jointly interested, under certain circumstances to execute Sealed Instruments.—*Approved Dec. 29, 1838.*

648. SEC. I. *Be it enacted*, That in all suits, either in favor of or against partners, or persons jointly interested, and in all cases when such partners, or persons jointly interested, shall in anywise become connected with any suit, or other matter, pending in any of the courts of this State, in any way whatsoever, wherein it shall become necessary for said partners, or persons jointly interested, to give bond, it shall and may be lawful for any one of said partners, or persons jointly interested, to execute the same, by signing the names of all of said partners, or persons jointly interested; and the same shall be obligatory and binding upon every of said partners, or persons [*jointly*] interested. Any law to the contrary notwithstanding.—[*See next Act.*]

Bonds executed by one Co-partner, or person jointly interested, declared valid; when given in legal proceedings.

AN ACT declaratory of the force and validity of all Executions or Judgments, issued or entered up in behalf of Co-Partners, or against Co-Partners, where the Partnership style is used or set forth, and the Christian and Surnames of the Co-Partners omitted. And also, to declare the force of Bonds made to Partnerships using their common name or style.—*Approved Dec. 22, 1840.*

649. SEC. I. *Be it enacted*, That from and after the passage of this act, no judgment or execution shall be arrested or annulled, in any case where the judgment has been entered up, or the execution issued, in favor of co-partners, or against co-partners, where the partnership style is used therein, instead of the christian and surnames of each person composing such partnership, as has been held to be necessary, by some of the judges of this State; but such judgment or execution shall not, for such omission, on the part of any officer of the court, clerk, or justice of the peace, be affected or delayed, in anywise thereby.

Judgment and Execution for and against Copartnership good.

650. SEC. II. All bonds payable to two persons or more, doing business under partnership name or style, shall be as obligatory and binding upon the obligors of such bonds, where made with obligees, using their firm, name or style, as if such name composing such partnership, had been set forth.

Bonds payable to partnerships, declar'd obligatory and binding.

SEC. III. All laws or decisions, militating against the plain and manifest intention of this act, be and the same are hereby repealed.

AN ACT to enable Co-Partners who are Plaintiffs in the Courts of Law and Equity, in this State, to maintain and prosecute their suits in said Courts, in certain cases, without being compelled to adduce proof of their Co-Partnership.—*Approved Dec. 2, 1841.*

*Whereas*, it has been decided by one or more of the Judges of the Superior Courts, of this State, that in all cases sued in said court, in the name of a firm of Joint Traders, or Co-Partners, in any business, that proof of the Co-Partnership, as alleged in the Plaintiff's Declaration, is necessary to be made, before said Plaintiffs are allowed to recover their demand; for remedy whereof, and to prevent the delay and expense of adducing such proof—

651. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall not be deemed or held necessary, in any of the courts of law or equity, of this State, for a firm of joint-traders, or co-partners, in any business, trade, or profession, who are, or hereafter, may be plaintiff, in any cause pending in either of said courts, to prove their co-partnership: *Provided nevertheless*, that nothing contained in this act shall prevent said courts, or any of them, from requiring such proof, in any case where the defendant or defendants, shall regularly, by plea in abatement, deny the existence of such firm or co-partnership as may be set forth by the plaintiffs in their bill, petition, declaration, or writ.

Partnership need not be proved.

Unless denied by Plea in Abatement.



SEC. II. All laws or parts of laws militating against this Act, be and the same are hereby repealed.

### *Forms in Cases of Special Partnership.*

STATE OF GEORGIA, } This is to certify and make known, that the  
     Houston County. } undersigned agree to enter into partnership, on  
 the terms and conditions hereafter expressed, to wit: The name of  
 the firm under which said partnership is to be conducted, shall be *Doe*  
 & *Roe*, and the principal place of business *Perry*, in said county. The  
 general nature of the business intended to be transacted, is *Mercantile*.  
 The names of the general partners in said partnership, are *John Doe*  
 and *Richard Roe*, who reside in said County, and *Charles Smith*, of the  
 county of *Bibb*, in said State, and *Ransom Reese*, of the County of  
 Chatham, in said State, who are special partners in said business. Said  
*Charles Smith* and *Ransom Reese*, the special partners in said business,  
 each contribute the sum of *five thousand* dollars to the common stock.  
 The said partners are to commence business on the *first* day of *June*  
 next, and are to continue doing business for the term of *five* years,  
 from that date next ensuing. This *May 1*, 1849.

Acknowledged and signed,  
 by the several co-partners,  
 before me, this *May 1*, 1849.  
*Edwin M. Clark, J. I. C.*

JOHN DOE.  
 RICHARD ROE.  
 CHARLES SMITH.  
 RANSOM REESE.

### CLERK'S OFFICE, SUPERIOR COURT.

I, *James Holdfast*, clerk of the Superior Court, do hereby certify  
 that the *above* certificate of partnership has been duly recorded in my  
 office. This *May 1*, 1859.

*Given under my official signature and seal of office,*

JAMES HOLDFAST, C. S. C. [L. S.]

### *Affidavit of General Partners.*

STATE OF GEORGIA, } Personally appeared before me, *James Mack*,  
     Houston County. } one of the Justices of the *Peace* in and for said  
 County, *John Doe* and *Richard Roe*, general partners, who being duly  
 sworn, say that *Charles Smith* and *Ransom Reese*, special partners,  
 have each contributed and paid in good faith, in cash, the sum of *five*  
*thousand* dollars, agreeably to their engagement in the *above* certifi-  
 cate of partnership.

Sworn to and subscribed,  
 before me, this *May 1*, 1859.  
*James Mack, J. P.*

JOHN DOE.  
 RICHARD ROE.

### *Notice.*

*John Doe* and *Richard Roe*, as general partners, and *Charles Smith*  
 and *Ransom Reese*, as special partners in *Mercantile* business, in the  
 town of *Perry*, *Houston County*, under the firm-name of *Doe and Roe*,  
 hereby give notice of the formation of said partnership, on the follow-  
 ing terms, to wit: each of the special partners pays in cash the sum of  
*five thousand* dollars into the common stock. Said partnership is to

commence business on the *first* day of *June* next, and to continue for the term of *five* years, next ensuing. Certificate and affidavit registered in the Clerk's Office of the Superior Court of *Houston* County. This *May* 1, 1859.

JOHN DOE,	}	<i>Gen'l Par's.</i>
RICHARD ROE,		
CHARLES SMITH,	}	<i>Special Par's.</i>
RANSOM REESE,		

LIEN.

AN ACT to give to Masons and Carpenters an incumbrance for debts due on account of work done and materials furnished in Building or Repairing Houses, and the premises to which they may be attached; and to repeal all laws on this subject, so far as relates to the counties of Richmond and McIntosh, and in the Cities of Savannah, Macon and Columbus.—*Approved Dec. 22, 1834.*

652. SEC. I. All debts which may hereafter become due to any mason or carpenter in the counties of Richmond and McIntosh, the cities of Savannah, Macon and Columbus, in this State, [*made general by the act of 1837.—See 661,*] for work done or materials furnished for building or repairing any house, (in all cases, when said mason or carpenter shall not have taken personal security for said debts,) shall constitute and be an incumbrance on such house and the premises to which it shall be attached, superior in dignity to and of higher claim than any other incumbrance whatever, no matter of what nature or sort the same may be, and without regard to the date of such other incumbrance.

653. SEC. II. Every mason or carpenter building or repairing any house, shall within three months from the time the same is completed, cause to be recorded in the clerk's office of the counties herein-before-named, and the counties in which the cities of Savannah, Macon and Columbus, severally lie, (where such building shall be erected or repaired,) his claim thereon; which said claim shall be in substance as follows: "A B, (a mason or carpenter, as the case may be,) claims an incumbrance on the house and premises on which it is erected, of C D, adjoining the lots or lands of E F and G H, for the building (or repairing, as the case may be,) of said house." For which service he shall pay said clerk fifty cents. And on the failure so to record said claim, the said house and premises shall stand discharged from said incumbrance, so far as respects any older lien on, or any subsequent *bonâ fide* sale or assignment of the same.

654. SEC. III. If any mason or carpenter shall not build or repair any house, by him undertaken to be built or repaired, according to his contract, the debt or demand for building or repairing the same, shall constitute no incumbrance on the house so built or repaired, or the premises.

655. SEC. IV. Any mason or carpenter having an incumbrance on a house and premises for the debt due for the building or repairing of the same, shall within twelve months from the time said debt shall become due, institute a suit for the recovery of such debt, in a court having jurisdiction of the cause; and shall in his declaration, describe the house and premises on which the work was done. And on the trial of said cause, the jury shall find the amount due, according to the evidence, and shall moreover, find specially that the same shall be levied on the property de-

Debts due to Masons and Carpenters of higher dignity than any other incumbrance, unless personal security be taken.

Claim to be recorded in three months

Form of the Claim.

Clerk's Fee. Failing to record Claim, premises released.

Work must be performed according to Contract.

Suit within 12 months.

The Declaration. Verdict of the Jury, and levy of *fi. fa.*



- scribed and proved, in preference to any other claim whatsoever: *Provided*, the claim of the plaintiff shall have been recorded according to law.
- Judgment and *fi. fa.* And the court shall award judgment and execution accordingly. And on the failure so to sue on said debt and prove the same to judgment, the said debt shall be placed on the same footing of any other simple contract or claim, and the said house and premises shall stand discharged from the incumbrance created by this act.
- If not sued, lien discharged.
- Delivery of possession does not affect lien. 656. SEC. V. On the building or repairing of any house, the same shall be delivered over to the possession and enjoyment of the person for whom the same was built or repaired, without affecting the lien created by this act.
- Premises being sold by other process, lien attaches to the proceeds. Notice must be given. 657. SEC. VI. Whenever any house and lot, or house and lands, subject to the incumbrance herein created, shall be seized and sold by authority of any process or decree of any court in this State, the same shall pass to the purchaser free from such incumbrance, which incumbrance shall attach to the proceeds of the sale, in the hands of the officer making it, on a notice, as in cases of claim to money raised under execution, which notice, with the money, shall be returned to the court by the said officer.
- Issue to be made up and tried. 658. SEC. VII. Whenever a claim of money, made under the foregoing section, shall be disputed by either the plaintiff or defendant in the execution, process or decree on which the money was raised, the court to which the return is made shall retain the amount thereof in the hands of the clerk, and order an issue to be made up to try the validity of the claim. Upon the trial of which issue, should it be determined against the claimant, he shall be adjudged to pay damages to the person entitled to the money, not exceeding twenty per centum, as the jury may assess, with interest from the date of the notice to retain, and costs.
- Claimant liable for Damages, Interest and Cost. 659. SEC. VIII. Any person or persons holding a lien on the premises on which any building is about to be erected or repaired, may give notice to the mason or carpenter about to build or repair a house on said premises, before the said building or repairs shall be commenced, not to proceed therewith. And if the said mason or carpenter, after having received such notice, shall proceed with said building or repairs, the said mason or carpenter shall hold his lien on the said house and premises, subject to the incumbrance of the person thus notifying him.
- Persons holding other lien to give notice. After Notice, his lien to have precedence. 660. SEC. IX. All laws giving master-masons and carpenters, or masons' and [or] carpenters' liens or incumbrances on houses erected or repaired, or materials found by them, be and the same are hereby repealed: *Provided however*, that liens and incumbrances created or attached by any of the aforesaid laws, shall be held good and valid in law and equity.
- Laws in favor of Masons and Carpenters heretofore, repealed.

### Notice of Lien.

STATE OF GEORGIA, ) To John L. Halstead, Sheriff of said County.  
 Houston County. ) You are hereby notified and required to retain in your hands the Money raised from the sale of the House and Lot in the town of Perry; sold *this day*, as the property of John Smith, as I have a lien (recorded, according to law,) on said Money for *Buildings heretofore erected* on said premises. This *May 1*, 1859.

THOMAS W. GURR, Carpenter.

*Notice to Carpenter about to Build.*

STATE OF GEORGIA, ) *To Thomas W. Gurr, Carpenter.*  
 Houston County. ) You are hereby notified and informed that I  
 have a Lien on lot number *four*, letter *A*, in the town of *Perry*, in said  
 County, (the property of *John Smith*,) for the sum of *five hundred* Dol-  
 lars, (recorded, according to law.) This notice is given in conformity  
 with law, as I understand that you are about to *Build a House* on said  
 lot for said *John Smith*. *May 1, 1859.*

JAMES MASHBURN, *Mason.*

AN ACT to extend to the several counties in this State, the provisions of an act, entitled "an act to give Masons and Carpenters an incumbrance for debts due on account of work done, and materials furnished, in Building or Repairing Houses, on such Houses and the premises to which they may be attached. And to repeal all laws on this subject, so far as relates to the counties of Richmond and McIntosh, and in the Cities of Savannah, Macon and Columbus," passed on the 22d Dec., 1834.—*Approved Dec. 28, 1837.*

661. SEC. I. *Be it enacted*, That all the provisions of an act entitled "An act to give masons and carpenters an incumbrance for debts due on account of work done, and materials furnished, in building or repairing houses, on such houses and the premises to which they may be attached. And to repeal all laws on this subject, so far as relates to the counties of Richmond and McIntosh, and in the cities of Savannah, Macon and Columbus," passed on the 22d Dec., 1834, be and the same are hereby extended to all the counties of this State; and that all laws militating against this act, be and they are hereby repealed. Act of 1834 made general.

AN ACT to give to all persons employed on Steam-boats and other Water-crafts on the Cattahoochee, Alatomaha and Ocmulgee Rivers, a lien on said Steam-boats or Water-crafts, for his, her or their Wages, and for Wood and Provisions furnished; and to point out and facilitate the mode of the collection of the same.—*Approved Dec. 7, 1841.*

662. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, all persons employed, either as captain, pilot, engineer, first or second mate, fire-man, deck-hand, or in any other capacity whatsoever, on all steam-boats and other water-craft, engaged in the navigation of the Chattahoochee, Alatomaha and Ocmulgee rivers, [*extended to Savannah and Flint rivers—see act of 1842 and act of 1845,*] for any debt, dues, wages or demands, that he, she or they may and shall have against the owner or owners of said steam-boat or other water-craft, for personal services done, rendered or performed on board the same; and for wood and provisions, [*shall have*] an exclusive lien on said steam-boat or other water-craft, against the owner or owners thereof, superior in dignity to and of higher claim than all other incumbrances, no matter of what nature or sort the same may be: *Provided*, Lien on Steam-boats, etc., for Wages, on certain Rivers. To be sued for he, she or they shall demand and prosecute the collection of the same as here- in 12 months. inafter to be provided for, at any time within twelve months after the same shall become due and payable.

663. SEC. II. Whenever any captain, pilot, engineer, first or second mate, fire-man, deck-hand, or any other person employed on any steam-boat or other water-craft, navigating and running on the Chattahoochee river, [*see 665.*] shall have any claim or demands against the owner or owners of said steam-boat or water-craft for services rendered on board the same, and shall be desirous of collecting the same, upon the said debt becoming due, and refusal to pay the How to proceed.



- Application how to be made. same upon demand made, he, she or they [*slave or free person of color*; see 668,] may, upon application to any judge of the superior court, or justice of the inferior court, in any county in which said steam-boat or water-craft may then lie, upon the same arriving at the landing, port or place of destination to which the same has been freighted, make affidavit before him of the amount due him, her or them, for any labor or services by him, her or them, done and performed on board of any steam-boat or other water-craft, and specify the name thereof. Whereupon, the said judge, or justice of the inferior court, shall grant an order to the clerks of their respective courts, as the case may be, requiring said clerk to enter up judgment upon said affidavit, in favor of said applicant for the amount sworn to be due [*and costs*; see 671.] And it shall be the duty of said clerk to issue, instantler, an execution therefor, against the owner or owners of said steam-boat or other water-craft; and also against said steam-boat or other water-craft, to be directed to the sheriff of said county, whose duty it shall be, forthwith, to levy said execution upon said steam-boat or other water-craft, and advertise and sell the same, under the same rules and regulations as govern sheriffs' sales in other cases: *Provided*, the said demand shall exceed the sum of thirty [*fifty*] dollars. And when the said sum shall be for thirty [*fifty*] dollars or under, then and in that case, the application shall be made to one of the justices of the peace in the district in which said steam-boat or other water-craft may then be, as aforesaid, the same being at the landing, port or place to which the same was last freighted. And the said justice of the peace, upon the filing of the said affidavit, shall issue execution thereon, instantler, for the amount sworn to be due, against said steam-boat or other water-craft, and the owner or owners thereof, and deliver the same to any lawful constable of the district aforesaid, whose duty it shall be, forthwith, to levy said execution on said steam-boat or other water-craft, and return the same to the sheriff of the county in which the same may be, whose duty it shall be to advertise and sell, as in other cases.
- Affidavit. 664. SEC. III. Whenever any owner or other person having control of any steam-boat or other water-craft, against which any proceedings may be had under the foregoing provisions of this act, and may be desirous of contesting said claim or demand, on the ground that the same or some part thereof is not due and owing, he, she or they shall file his, her or their affidavit, denying that the whole or some part thereof, was due, at the time the applicant files [*filed*] his affidavit, as provided for in the second section of this act. But when only a part is denied on oath, the amount admitted to be due shall be paid before the officer levying said execution shall deliver up the property levied on, as herein-after specified; and that after the filing of the affidavit, as above required in this section, and giving bond and good security, residing in the county where such proceedings may be had, to the plaintiffs, in double the amount claimed, conditioned for the [*payment of the*] eventual condemnation money and all costs incurred thereon. And whenever said affidavit and bond shall be filed, as aforesaid, the levying officer shall deliver up the property levied on, and return the affidavit and bond to the next court in said county to which said execution may have been returnable; upon which an issue shall be made up and formed, and the truth of the same shall be tried by a jury of said courts, respectively, at the first term of said court, unless good cause be shown for a continuance; but the same shall be continued only for one term, by each party. And from the verdict rendered, in such case, either party shall have the power or privilege to enter an appeal.
- Order of the Judge or Justice. Judgment. Execution how issued. Levy. Advertisem'nt and Sale. Sums under \$30 how recovered. J. of the P. must issue Execution. Constable must levy *fi. fa.* and make return to the Sheriff. Defence how made. Affidavit must be filed. Amount due must be paid. Bond and Security given. Affidavit and Bond return'd. Issue. Continuance. Appeal allowed. Extended to Alatomaha and Ocmulgee Rivers. 665. SEC. IV. All the provisions of this act, shall apply to all steam-boats and water-crafts navigating the Alatomaha and Ocmulgee rivers; and that all persons who furnish wood and provisions to said steam-boats



or other water-craft, shall have the same remedies as is herein-before provided.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to give to all persons employed on Steam-Boats and other Water-Crafts on the Chattahoochee, Alatomaha and Ocmulgee Rivers, a Lien on said Steam-Boats or Water-Crafts, for his, her or their Wages, and for Wood and Provisions furnished. And to point out and facilitate the mode of the collection of the same," assented to December 11th, 1841, so as to include Savannah River within the provisions of the same. And for other purposes.—*Approved Dec. 27, 1842.*

666. SEC. I. *Be it enacted*, That from and after the passage of this act, the above-recited act, be and the same shall be so amended as to include the Savannah River within the provisions of the above-recited act.

Savannah River includ'd in the Act of 1841.

667. SEC. II. All the provisions of the act, of which this act is an amendment, shall apply to all steam saw-mills, at or near any of the water-courses in this State, in behalf of all and every person or persons who may be employed by the owner or owners, agents or superintendents, for services rendered, or for timber or fire-wood of any description, provisions or supplies, delivered to any such steam saw-mill. And that the same course shall be pursued for the recovery of any such claim or claims, as is stated in the second or [and] third [sections] of the act of which the present act is an amendment: *Provided*, the demand for such claim be first made to the owner or owners, agents or any person having control of any steam saw-mill against which any proceedings may be had under the provisions of the said act.

Extended to Steam Mills.

Demand must first be made of Owner, etc.

SEC. III. All mill-wrights and builders of gold machines, in this State, shall be entitled to the same lien, and shall enforce said lien in the same way as is provided by this act, and the one to which this is amendatory.

Millwrights and Builders of Gold Machines.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act passed in eighteen hundred and forty-one, to give to all persons employed on Steam-Boats and other Crafts on the Chattahoochee, Alatomaha and Ocmulgee Rivers, a Lien on said Steam-Boats or Water-Crafts, for his, her or their Wages, and for Wood and Provisions furnished. And to point out and facilitate the mode of the collection of the same, so far as to extend the provisions of the same. And to include Flint River therein.—*Approved Dec. 26, 1845.*

668. SEC. I. *Be it enacted*, That from and immediately after the passing of this act, that all the provisions of the above-recited act, be and the same are hereby extended to all persons employed on steam-boats and other water-crafts on Flint River: *And whereas*, it frequently happens that persons employed on said steam-boats and other water-crafts on said Chattahoochee, Alatomaha, Ocmulgee and Flint rivers, are negroes and free persons of color: *Be it therefore enacted*, That whenever any negro, being a slave or free person of color, shall be employed as pilot, engineer, first or second mate, fire-man, deck-hand, or in any other capacity whatsoever, on all steam-boats and other water-crafts engaged in the navigation of said rivers, to wit—the Chattahoochee, Alatomaha, Ocmulgee and Flint rivers, that then and in all such cases, the owner, master, agent, attorney-at-law or attorney-in-fact of said negro, slave or free person of color,

Extended to Flint River.

Services rendered by Slave or Free Person of Color, how recover'd



shall have the like remedies for wages or demands which he, she or they may and shall have against the owner or owners of said steam-boats or other water-crafts, for the services of said negro, slave or free person of color, as are given to all other persons whose employments are recited in said act.

SEC. II. [Repealing section.]

AN ACT to amend an act entitled "an act to give to all persons employed on Steam-Boats and other Water-Crafts on the Chattahoochee, Alamaha and Ocmulgee Rivers, a Lien on said Steam-Boats or Water-Crafts, for his, her or their Wages, and for Wood and Provisions furnished. And to point out and facilitate the mode of the collection of the same," assented to Dec. 11th, 1841, so as to include all Liens on personal property, under certain regulations. And for other purposes.—*Approved Dec. 24, 1847.*

*Whereas*, in many cases, persons having liens upon personal property, created by the common-law or the statute-law of force in this State, have no power to sell the same, whereby manifest injustice results to such persons, and frequently the delay works injury to both Debtor and Creditor; for remedy whereof—

Summary Process to enforce Liens on personal property.

669. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, the above-recited act shall be so amended as to authorize any person or persons, who by the principles of the common-law, or the statute-law of force in this State, or which may be hereafter enacted; have, or shall have a lien on personal property within the limits of this State, to pursue the course pointed out by said above-recited act; by applying, in proper person, or by attorney or agent, to one of the justices of the peace of the district in which the said personal property may be at the time of such application; (where the debt does not exceed thirty [fifty] dollars;) or to the judge of the superior, or one of the justices of the inferior court of the county where the said personal property may be, at the time of such application, (where the sum sworn to shall *not*, [the word "*not*" is evidently a mistake,] exceed thirty [fifty] dollars,) and by making affidavit before him of the amount due him, her or them, and the nature of the lien, and how the same has occurred, and upon what personal property the said lien has attached; and thereupon, all the provisions of the said recited act, of which this act is an amendment, shall apply. And the same proceedings shall be had, as provided for by said recited act, so far as the same can be applicable hereto; *Provided*, that he, she or they shall demand and prosecute the collection of the same, as provided for in said recited act, at any time within twelve months after the same shall become due and payable: *And provided also*, that no such proceeding shall be had until the demand for the payment of such lien shall first be made upon the owner or owners, or their agents or attorneys-in-fact, if they or any of them reside within the county where such proceedings shall be had, and refusal to pay the same, shall have been made.

Affidavit must be made.

Must be prosecuted within 12 months.

Demand must first be made.

Act of 1841 not affected in its construction by this act.

670. SEC. II. Nothing herein contained shall be construed to repeal so much of said recited act, as requires the affidavit to be made, in the cases specified in said act, or any act heretofore passed amendatory of the same, before a judge of the superior or justice of the inferior court, or one of the justices of the peace of the district in which said steam-boat or other water-craft may then lie, upon the same arriving at the landing, port or place of destination to which the same has been freighted; but that the said affidavit, shall in the cases provided for by said recited act, or any

act heretofore passed, amendatory of the same, continue to be made as provided for by said act.

671. SEC. III. In all cases, both under said recited act, and all acts amendatory thereof, heretofore passed, and in all cases provided for by this act, it shall be the duty of the judge or justice before whom the affidavit shall be made, to direct the clerk to enter up judgment for the costs of such proceedings, and any interest that may be due or may become due, as well as for the principal debt, as provided for in said recited act. And it shall be the duty of the said clerk, or the justice of the peace, (when proceedings are had before a justice,) to issue execution for such costs and interest.

Judgment for  
Costs and In-  
terest.

Execution to  
be issued.

672. SEC. IV. In no case shall the said execution so issued be levied on any other property except such as shall be subject to such lien. And it shall be lawful for the owner, or other person claiming the said property, or his agent or attorney, not only to contest such claim or demand, on the ground that the same or some part thereof is not due and owing; as provided for in the third section of said recited act, but also, to contest the existence of any lien therein, by making affidavit denying the existence of such lien, and giving bond as provided for in said third section of said act; and such proceedings shall thereupon be had as are directed in said third section of said recited act.

Levy.  
Owner may  
dispute Lien.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to give all persons employed on Steam-Boats and other Water-Crafts on the Chattahoochee, Alatomaha and Ocmulgee Rivers, a Lien on said Steam-Boats or Water-Crafts for his, her or their Wages, and for Wood and Provisions furnished. And to point out and facilitate the mode of the collection of the same," assented to December 7th, 1841, so as to extend the provisions of the same, and in favor of Machinists.—*Approved Jan. 19, 1852.*

673. SEC. I. *Be it enacted*, That all machinists in this State, who may furnish any kind of machinery, or who may repair the same, which may be put up or used in any mill building, steam-boat or vessel, in any county, or in any of the rivers or waters of this State, shall be entitled to the same lien and may enforce it in the same way as is provided in the act of the General Assembly above recited, in the title of this act.—[*See next act.*]

Machinists en-  
titled to lien.

AN ACT amendatory of "an act to give to Masons and Carpenters in incumbrance for debts due on account of work done and materials furnished in Building or Repairing Houses, and the premises to which they may be attached; and to repeal all laws on this subject, so far as relates to the counties of Richmond and McIntosh, and in the Cities of Savannah, Macon and Columbus," assented to the 22d day of December, 1834. And of "an act to extend to the several counties of this State, the provisions of said act," assented to the 28th day of December, 1837. And to extend the provisions of said act [*acts*] to Machinists who shall furnish or put up, in any County in this State, Steam-Mills or other Machinery, or who may repair the same.—*Approved Feb. 18, 1854.*

Act of 1841,  
extended to  
Machinists.

674. SEC. I. *Be it enacted*, That from and after the passage of this act, any machinist who may furnish or put up, in any county in this State, any steam-mill, or other machinery, or who may repair the same, shall be entitled to the same lien on such machinery, and the premises to which the same may be attached; and may enforce such lien in the same manner and with like benefits, privileges and restrictions, as is by said acts extended to masons and carpenters.

Acts of 1834  
and 1837 ex-  
tended to  
Machinists.



## CORPORATION, ETC.

AN ACT to provide for the service of Original Process upon Corporations.—  
*Approved Dec. 27, 1845.*

Service of  
Original Pro-  
cess on Cor-  
poration how  
made.

675. *Be it enacted*, That from and after the passing of this act, service of all bills, subpoenas, writs, attachments and other original process necessary to the commencement of any suit against any corporation, in any court of law or equity in this State, may be executed by leaving the same at the place of transacting the usual and ordinary public business of said corporation, if any such place of business there shall be, within the jurisdiction of the court in which said suit may or shall be commenced. And if any corporation shall not have any such place for the transaction of its usual and ordinary public business, then by leaving the same at its last notorious place of transacting its said business, and publishing a copy of said subpoena, attachment, or other original process, in one of the public gazettes of this State, for the space of three months. And a copy of the news-paper containing said publication shall be received in all the courts of this State, as sufficient evidence of such service.

Copy News-  
paper evid'ce.

AN ACT to facilitate the Collection of Debts against Incorporations and the Stock-holders thereof.—*Approved Dec. 10, 1841.*

W'kly Notice  
for four weeks  
of a suit ag't  
a Corporation  
shall be Notice  
to each  
Stockholder.

676. SEC. I. *Be it enacted*, That it shall and may be lawful for plaintiffs or complainants, within one month after the institution of any suit or suits at law or equity, against any incorporation, joint-stock or manufacturing company, to publish once a week for four successive weeks, in some public gazette of this State, notice of the commencement of said suit or suits, and said publication shall operate as notice to each stock-holder in said incorporation, joint-stock, or manufacturing company, for the purposes herein-after mentioned.

When Judg-  
ment is ren-  
dered, Execu-  
tion shall is-  
sue, first ag't  
the Company,  
and upon re-  
turn of *nulla*  
*bona* Execut'n  
against indi-  
vidual Stock-  
holders.

677. SEC. II. When notice has been given as aforesaid, and a judgment or decree has been obtained against any incorporation, joint-stock, or manufacturing company, where the individual, or private property of the stock-holders is bound for the payment of the whole or any part of the debts of said company, execution shall first issue against the goods and chattels, lands and tenements of said company; and upon the return thereof by the proper officer, with the entry "no corporate property to be found," endorsed thereon, that then and in that case, it shall be the duty of the clerk, or other officer, upon application of the plaintiff, his agent or attorney, accompanied with a certificate, as herein-after directed to be obtained, forthwith to issue an execution against each of the said stock-holders, if required, for their ratable part of the said debt and costs of suit, in proportion to their respective shares, or other liabilities under their charter of incorporation.

List of Stock-  
holders must  
be furnished.

678. SEC. III. It shall be the duty of the president, or presiding officer, by whatever name he may be designated, upon application of the plaintiff, his agent or attorney, forthwith to give a certificate under oath of the names of the stock-holders in said company, and the number of shares owned by each, at the time of the rendition of judgment against said company.

President fail-  
ing to furnish  
list, Execut'n  
to issue ag't  
him.

679. SEC. IV. If upon application by the plaintiff, his agent or attorney, to the president or presiding officer as aforesaid, he shall refuse to give a certificate as aforesaid, or shall abscond or conceal himself to avoid giving the same, and oath being made by the plaintiff, his agent or attorney, of said refusal, the clerk, or other officer, is hereby required to issue execution against said president or presiding officer as aforesaid, for the amount of principal, interest and cost of said suit.

680. SEC. V. If the president, directors, or other officers of said company



shall fail or refuse to defend said suit or suits, brought as aforesaid, any one or more of the stock-holders of said company, shall be permitted by the court, before which said suit or suits is pending, to plead to and defend the same, in as full and ample a manner as said company in its corporate character, could plead to and defend the same.

Stockholder may plead and defend when Company refuses.

681. SEC. VI. The defendant or defendants in execution, under the provisions of this act, shall be entitled to an illegality, under the same rules, regulations and restrictions, as defendants are in other cases under the existing laws of this State.

Defendant entitled to Illegality.

682. SEC. VII. This statute shall be understood and construed as cumulative of the common-law. And that all laws and parts of laws militating against the same, and this construction thereof, be and the same are hereby repealed.

How this statute is to be construed.

AN Act to point out the manner of creating certain Corporations ; to define their rights and privileges, and to provide a mode of changing the names of individuals.—*Approved Dec. 28, 1843.*

683. SEC. I. *Be it enacted,* That when the persons interested shall desire to have any Church, Camp-Ground, Academy, School, volunteer Military Company, Manufacturing Company, Trading Company, Ice Company, Fire Company, Theatre Company, or Hotel Company, Bridge and Ferry Company incorporated, [see 688,] they shall petition in writing, the superior or inferior court of the county where such association may have been formed, or may desire to transact business, for that purpose, setting forth the object of their association and the privilege they desire to exercise, together with the name and style by which they desire to be incorporated, and said court shall pass a rule or order, directing said petition to be entered of record on the minutes of said court.

Persons desiring to be Incorporated must Petition the Court.

684. SEC. II. When such rule or order is passed and said petition is entered of record, the said companies or associations shall have power respectively, under and by the name designated in their petition, to have and use a common seal ; to contract and be contracted with ; to sue and be sued ; to answer and be answered unto, in any court of law or equity ; to appoint such officers as they may deem necessary, and to make such rules and regulations as they may think proper for their own government, not contrary to the laws of this State. But shall make no contracts, or purchase, or hold any property of any kind, except such as may be absolutely necessary to carry into effect the object of their incorporation. (Nothing herein contained shall be so construed as to confer banking or insurance privileges on any company or association herein enumerated.) And the individual members of such manufacturing, trading, theatre, ice and hotel companies, shall be bound for the eventual payment of all the contracts of said companies, as in case of partnership.

Powers of such Corporations.

685. SEC. III. No company or association shall be incorporated under this act, for a longer period than fourteen years, but the same may be renewed whenever necessary, according to the provisions of the first section of this act.

Banking and Insurance privileges prohibited. Stock-holders liable as Partners.

14 years period of Incorporation.

686. SEC. IV. The said superior or inferior court shall have power and authority, upon petition in writing, to change the name of any individuals, by rule or order, for that purpose : *Provided,* such individual shall have resided in the county where his or her application is made, for at least one year previous thereto, and shall give at least three months' prior notice in one of the nearest news-papers, and at the court-house door of said county, of the intended application.—[*See title "Name, how changed, etc."*]

Power to change Names of Persons. Public Notice of application must be given.

687. SEC. V. For entering any of said petitions and orders on the

Fees of the Clerk.



Certified copy  
evidence.

minutes of the court, and furnishing a certified copy thereof, the clerk shall be entitled to a fee of five dollars, except in cases of application by individuals, for the change of names, in which case the clerk of said court shall be entitled to the fee of one dollar; and that such certified copy shall be evidence of the matters therein stated, in any court of law or equity in this State.

SEC. VI. All laws or parts of laws militating against this act, be and the same are hereby repealed.

### *Petition for Incorporation.*

STATE OF GEORGIA, }  
Houston County. } *To the Superior Court of said County.*

The Petition of the undersigned, sheweth, that they (and their successors,) desire to be Incorporated under the name and style of "*The Trustees of the Perry-Circuit Camp-Ground*," which *Camp-Ground* is located in the County aforesaid. The object of your Petitioners, is to protect said *Camp-Ground* from intrusion and injury; for which purpose your Petitioners pray the passing of an Order, conferring upon Petitioners, and their successors, the privileges applicable to their Incorporation, enumerated in the second section of an act of eighteen hundred and forty-three, entitled "an act to point out the manner of creating certain Corporations; to define their rights and privileges, and to provide a mode of changing the Names of Individuals." This *April 1, 1859.*

JOHN DOE,  
RICHARD ROE, *etc.*

### *Order of Incorporation.*

STATE OF GEORGIA, }  
Houston County. } *Superior Court, April Term, 1859.*

Upon the Petition of *John Doe, Richard Roe, etc.*, praying to be Incorporated as Trustees of the *Perry-Circuit Camp-Ground*, in said County; it is hereby ordered that said Petition be entered of record; that *John Doe, Richard Roe*, and their successors, be and they are hereby Incorporated under the name and style of "*The Trustees of the Perry-Circuit Camp-Ground*," with authority and power to carry the object of their Incorporation, (to wit, the protection of said *Camp-Ground*, from injury and intrusion,) into full and complete effect. And said Corporators, and their successors, are hereby clothed with all the power and authority applicable to their Incorporation, enumerated in the second section of an act of the Legislature of eighteen hundred and forty-three, entitled "an act to point out the manner of creating certain Corporations; to define their rights and privileges; and to provide a mode of changing the Names of individuals."

*A true extract from the Minutes.*

[L. S.]

WILLIAM H. MILLER, *Clerk.*

AN ACT to extend the provisions of the act passed on the twenty-eighth day of Dec. 1843, entitled "an act to point out the manner of creating certain Corporations; to define their rights and privileges, and to provide a mode of changing the Names of individuals.—*Approved Dec. 29, 1845.*

Act of 1843  
extended to  
all Associa-  
tions and

688. SEC. I. *Be it enacted*, That the provisions of said act, so far as the same relates to corporations, be and the same are hereby extended to all associations and companies whatsoever, except banks and insurance companies;

and that the individual members of such associations and companies, when incorporated under said act, or under this act, shall be liable as therein specified, for the contracts of said associations or companies, whenever any such associations or companies are incorporated for the purpose of trading or transacting business for profit.

Companies except Banks and Insurance Companies.

AN ACT to authorize parties Complainant, either in law or equity, to perfect service of writs against Corporations, under certain circumstances therein named.—*Approved March 4, 1856.*

689. SEC. 1. *Be it enacted*, That from and after the passage of this act, where any body corporate, created or hereafter to be created by the laws of this State, shall have no public place of doing business, or shall have no individual in office upon whom service of writs may be perfected, within the knowledge of any party complainant, either in law or in equity, then and in that event, the said complainant may make an affidavit, that the corporation has no public place of doing business, or has no individual in office, upon whom service of writs may be perfected, [within] the knowledge of said complainant. And such affidavit being filed in the clerk's office of the court to which the said writ may be made returnable, the clerk of the said court shall advertise a citation (to the said defendants, to be and appear at the said court, to answer the complaint,) once a week for three weeks prior to the court to which the said complaint may be returnable, in some news-paper located in the county in which the suit is brought. If no news-paper is published therein, then in one nearest thereto. And such advertisement shall be deemed and held a service upon such corporation, for all purposes either in law or equity. Any law, custom, or usage, to the contrary notwithstanding.

How services of Writs may be perfected on certain Corporations.

### *Complainant's Affidavit.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } *Justice of the Peace*, in and for said County, *John Doe*, who being duly sworn, saith, that he hath instituted his action of *Assumpsit*, in the *Superior Court* of said County, against the "*Houston Manufacturing Company*," a Corporation created by act of the Legislature; that said Corporation has no public place of doing business, and has no individuals in office upon whom service of writs may be perfected, in said State, within the knowledge of deponent.

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.*

JOHN DOE.

### *Citation by the Clerk.*

STATE OF GEORGIA, } The "*Houston Manufacturing Company*," their  
Houston County. } Agents and Attorneys, are hereby notified to be and appear at the next term of the *Superior Court* of said County, to be held on the *fourth Monday in October* next, to answer the complaint of *John Doe*, in an action of *Assumpsit*, returnable to said Court. This *May 1*, 1859.

WILLIAM H. MILLER, *Clerk*.

AN ACT to facilitate and expedite the collection of debts due by Corporations, Joint-Stock Companies and Associations, in cases where the Stock-holders and members are liable for the same.—*Approved March 5, 1856.*

690. SEC. 1. *Be it enacted*, That from and after the passage of this act,



Plaintiff not required to prove execution of Bond, etc., unless the plea of *non est factum* be filed.

on the trial of any action or suit which is now pending, or may be hereafter instituted either at law or in equity, for the recovery of any bond, bill, note, or other written contract, purporting to have been executed by any corporation, joint-stock company or association, against all or any of the members thereof; or when such contract is introduced as evidence in the same, it shall not be necessary for the plaintiff in such suits, nor shall he be required to prove the execution of such bond, bill, note, or other contract, unless the defendant or defendants shall first deny, under oath, at the first term after such suit is commenced, the due execution of the same as alleged by the plaintiff. And in case the defendant shall so deny the same, then the burthen of proving the proper execution of the contract so sued on, for the recovery of which the suit is brought, shall rest on the plaintiff, as in other cases when the plea of *non est factum* is properly plead.

Oyer may be demanded.

691. SEC. II. That the defendant may at any time crave oyer of bond, bill, note, or other contract, for the purpose of filing such defence.

Execution must be levied on property of party first liable unless otherwise directed.

691\*. SEC. III. That in cases where the members of any corporation, joint-stock company or association are liable ultimately, or in the second instance, it shall be the duty of the sheriff, or other officer charged with the execution of the process against the party first liable, to make diligent search for and levy such execution or process, on the property in the possession of such party so primarily liable, and in no case to levy on property in the possession of and claimed by any other person, unless specially directed so to do, in writing, by the plaintiff in such process, or his attorney.

SEC. IV. [Repeals all conflicting laws.]

AN ACT to preserve and dispose of property and effects of Corporations, after their dissolution; and to provide for the payment of the debts due by the same.—*Approved Dec. 15, 1855.*

Effects of dissolved Corporation, how disposed of.

692. SEC. I. *Be it enacted*, That from and after the passage of this act, either by the expiration or forfeiture of its charter, or in any other manner whatever, any corporation shall be dissolved, the real estate belonging to such dissolved corporation at the time of such dissolution, shall not revert to the grantor; nor its personal estates escheat; nor the debts due to and by such corporation, at the time of its dissolution, be extinguished; but the same property, both real and personal, and the debts due to such corporation, shall remain as if no such dissolution had taken place, and become a trust-fund, first for the payment of the debts due by such corporation, and next, for distribution amongst the stock-holders thereof.

Judge must appoint Receiver.

693. SEC. II. That it shall be the duty of the judge of the superior courts of the circuit in which such dissolved corporation may have been located, on a suitable and proper application of any creditor of (and on failure of any creditor to do so, by any stock-holder in the same,) to appoint a receiver to take charge of the property, assets and effects of every kind and description, of such corporation. And on such receiver being appointed as aforesaid, (or by the legislature, or by the authority of the same, and on notice of the same being given to the person or persons last acting as president, director and cashier of such corporation, it shall be the duty of all and each of them, within the time and at the place prescribed in said order of appointment, to appear before the judge appointing such receiver, or before the judge of the superior courts of the circuit where such corporation was located, if such receiver should be appointed by the legislature or its authority, and under oath, turn over and deliver up to such receiver, all the property, both real and personal, belonging to said corporation, with the evidences of title to the same; also, all the assets and effects of such corporation, of every kind and description whatsoever; together with all the books and papers belonging to or used by such corporation

Officers must account to Receiver.

connected in any manner, with their business. And if said corporation had at any time before dissolution, suspended payment or refused to pay its liabilities, it shall be the duty of said president, director and cashier, to make out and return, under oath as aforesaid, a full and complete statement of the state and condition of said corporation, at the time of such dissolution; together with a schedule and statement of all the property, assets and effects of the same, at the time last aforesaid, and the disposition made of said property and assets, or show to the officer appointing such receiver, some good and sufficient reason why he should not comply with the provisions of this act. Must exhibit Assets, etc.

694. SEC. III. That on failure of such president, director and cashier, to appear before the officer aforesaid, after notice of the appointment of such receiver aforesaid, or render to such officer some satisfactory reason for not doing so, [*they*] shall severally be deemed guilty of a misdemeanor, and on conviction thereof, be punished by confinement in the penitentiary, for a term not less than two years, nor more than four years. Punishment of contumacious Officers.

SEC. IV. [Repeals all conflicting laws.]

AN ACT to amend an act "Pointing out the mode of collecting a certain description of Debts therein mentioned," approved December 19th, 1818; and to extend the provisions of the same [*so*] as to embrace Corporations.—*Approved Dec. 11, 1858.*

695. SEC. I. That the said recited act, be and the same is hereby so altered and amended as to embrace debts against corporations, as well as joint-obligors and joint-promissors. And that in all such cases, the plaintiff, may at his election sue, at law, the surviving co-partner or co-partners, or the representative of the deceased co-partner or co-partners, or all, in the same action; subject to the proviso in said act mentioned.—[*See Declaration, Plea, etc.*] Act of 1818, extended to Corporations.

SEC. II. [Repeals conflicting laws.]

## ARBITRATION.

696. SEC. XXX. In all matters submitted to reference by parties in a suit, under a rule of court or other agreement in writing, signed by the parties, judgment shall be entered up by the party in whose favor the award is given, and execution shall issue for the sums awarded, to be paid as they respectively become due; and to be levied on the property of the party against whom the judgment shall have been entered up. And such other proceedings shall be had thereon by the court, as in cases of judgments entered up on verdicts of juries: *Provided*, that no judgment shall be entered upon an award where it shall appear any other cause or causes stand on the docket of the court, against the defendant or defendants undetermined, before the cause in which a rule or other agreement in writing for arbitration, is entered.—[*See next Act.*] Matters in dispute may be Arbitrated.

AN ACT to authorize persons to submit controversies to Arbitration; declaring how Arbitrators shall be chosen; prescribing their forms; regulating the manner in which their proceedings shall be conducted, and for other purposes therein mentioned.—*Approved March 5, 1856.*

697. SEC. I. *The General Assembly of the State of Georgia do enact as follows:* All persons having matters of controversy, may submit the same to arbitration; and any personal representative of any decedent, or guardian of any infant, idiot or lunatic, or any trustee, may submit to arbitration any matter of controversy touching the estate or property of Controversies may be submitted to Arbitration.



such decedent, infant, idiot or lunatic, or in respect to which he is trustee.

- Number of Arbitrators. 698. SEC. II. Every arbitration shall be composed of three arbitrators, one of whom shall be chosen by each of the parties, and one by the arbitrators chosen by the parties.
- Submissions to be in writing and signed by the parties. 699. SEC. III. All submissions to arbitration shall be in writing, and shall contain a clear and accurate statement of the matters in controversy submitted; the names of the arbitrators chosen by the parties; and also, any other matter that may be pertinent to said submission. Said submission shall be signed by the parties, or their agents, and when so signed shall be delivered to one of the arbitrators chosen by the parties, and when this is done said submission shall be irrevocable, except by the consent of all the parties.
- Time and place of meeting. 700. SEC. IV. The arbitrators chosen by the parties shall then choose another arbitrator, and they shall appoint their time and place of meeting, which shall be done as soon as can be done consistent with a proper preparation of the case, and the parties shall have three days' notice of the time and place of meeting.
- Notice.
- List of witnesses. 701. SEC. V. At the time the submission is made, or so soon thereafter as can conveniently be done, it shall be the duty of the parties to furnish the arbitrators chosen by the parties, or one of them, with a list of the witnesses whose testimony they desire to be had before the arbitrators, and any party neglecting to do this for ten days after said submission is made, the hearing of the said case shall not be delayed on account of the witnesses on the part of the party so neglecting not being present.
- Neglect not to cause delay.
- Power of Arbitrators. 702. SEC. VI. Said arbitrators shall be clothed with all the powers of the superior courts, to compel the attendance of witnesses before them, and also to compel them to testify; and any one of said arbitrators shall have power to issue subpoenas requiring the attendance of witnesses at the time and place appointed for their meeting; which subpoenas shall be served in the manner pointed out by law for the service of subpoenas in cases pending in the superior courts. And witnesses so attending shall be entitled to the same compensation as witnesses attending the superior courts, and may be collected in the same way.
- Subpoena.
- Pay of Witnesses.
- Interrogatories. 703. SEC. VII. Testimony may be taken by commission, under the same circumstances and in the manner and subject to the same rules and regulations as is now prescribed by law for the taking of testimony by commission in the superior courts, saving only that the original interrogatories shall be filed with one of the commissioners [*arbitrators*] and the commission issued by one of the commissioners, [*arbitrators.*] And the testimony when taken, shall be directed to the arbitrator who issued the commission.
- How directed.
- Who may be Witnesses. 704. SEC. VIII. All free white persons who have arrived at sufficient age to understand the obligation of an oath, and are not idiots or lunatics, including also the parties to said submission, shall be competent witnesses in all cases before the arbitrators, saving only that the wife shall not be witness against the husband nor the husband against the wife, except in cases where the same is allowed by law.
- Books, etc., to be produced. 705. SEC. IX. Said arbitrators shall be clothed with all the powers of the superior courts, to compel parties to produce books and all other papers that they may deem necessary and proper for the investigation of the matters submitted to them, giving to the party or his agent, from whom the production is required, thirty days' notice.
- Absence of Arbitrator how supplied. 706. SEC. X. When the arbitrators meet for the purpose of hearing said case, if any one of the arbitrators selected by the parties should not



be present, the party whose arbitrator is absent may then choose another in his place. And if the arbitrator chosen by the arbitrators is absent, the arbitrators chosen by the parties may choose another in his place. And the arbitrators so chosen shall have all the powers of the arbitrators first chosen.

707. SEC. XI. When the arbitrators meet for the purpose of hearing said case and making up their award, they shall first be sworn, impartially to determine the matters submitted to them according to law and the justice and equity of the case, without favor or affection to either party. And which oath they may administer to each other.

Oath of Arbitrators.

708. SEC. XII. When, upon the meeting of the arbitrators, either party shall not be ready for trial, it shall be lawful for the arbitrators to postpone the hearing of the case to a future day, which day shall be as early as possible, looking at all the circumstances of the case, but there shall not be more than two adjournments of the case except from providential cause.

Postponem'ts allowed.

709. SEC. XIII. After said arbitrators shall have commenced their investigation, they may adjourn from day to day, until their investigations are completed and they have made up their award.

May adjourn from day to day.

710. SEC. XIV. After said arbitrators have made up their award, they shall furnish a copy of the same to each of the parties, and shall return the original award to the next superior court of the county where the award is made, and said award shall be entered on the minutes of said court, and shall have all the force and effect of a judgment or decree of said superior court, and may be enforced in the same way, at any time after the adjournment of said court, and shall be final and conclusive between the parties as to all matters submitted to the arbitrators, unless objections shall be plead to the same, as provided in the next section of this act. And that for each and every award entered upon the minutes of the superior court, the clerk shall be entitled to the same fees as are now allowed by law for the entering of judgment in other cases; to be paid by the party against whom the award is made.

Award returned, copies furnished, etc.

Effect of Award.

Fees of the Clerk.

711. SEC. XV. When said award shall have been returned to said court and entered upon its minutes, as provided in the previous section of this act, it shall be lawful for either of the parties to suggest on oath, to said court, at the term to which said award is returned, that said arbitrators, or some one of them, has been guilty of fraud and corruption in making said award. And it shall be the duty of said court to cause an issue to be made upon such suggestion, which issue shall be heard by a special jury, under the same rules and regulations as are prescribed for the trial of appeals; and which trial shall be had at the same term of the court at which the suggestion is made, unless good cause is shown for a continuance, when the same may be continued for one term and no longer.

Suggestion of fraud, how made and tried.

712. SEC. XVI. If the jury shall return a verdict, finding that said arbitrators, or either of them, had been guilty of fraud or corruption in making up said award, it shall be the duty of the court forthwith, to pass an order vacating and setting aside said award, and the same shall be null and void. But if said jury shall not so find, said award shall remain in full force, as provided in the previous section of this act, and shall be final and conclusive.

Award vacated.

Award conclusive.

713. SEC. XVII. Said arbitrators shall have power to administer oaths to witnesses, and all other oaths that may be necessary for carrying this act into full effect.

Oaths to Witnesses.

714. SEC. XVIII. Said arbitrators shall return in their award, the costs of the case, which they may tax against either party, according as

How Costs to be taxed.



shall seem just and right; or they may tax part of the cost against one party and part against the other.

Compensation  
of Arbitrators.

715. SEC. XIX. Said arbitrators shall have such compensation for their services as may be agreed on by themselves and the parties, and which shall be paid equally, by the parties.

SEC. XX. [Repeals conflicting laws.]

### *Submission.*

STATE OF GEORGIA, } Whereas, there exists between the undesigned,  
Houston County. } a matter of controversy touching the *soundness of a Negro man named Sam, lately sold and warranted to be sound and well, by John Doe to Richard Roe.* And whereas, the undersigned prefer to submit said matter of controversy to the Arbitrament of Arbitrators, rather than a suit should be instituted in the Courts; they have therefore, determined to submit the same to the Judgment and Award of *Charles Smith*, chosen by *John Doe*, and *James West* chosen by *Richard Roe*, and *Willis Thomas*, chosen by said *Charles Smith* and *James West*.  
This May 1, 1859.

JOHN DOE,  
RICHARD ROE.

### *Notice to the Parties.*

STATE OF GEORGIA, } To *John Doe* and *Richard Roe*—You are hereby  
Houston County. } notified, that the undersigned will meet in the town of *Perry*, on the *tenth instant*, for the purpose of hearing and determining the matter of controversy existing between you, touching the *soundness or unsoundness of the Negro man Sam.* This May 1, 1859.

CHARLES SMITH, }  
JAMES WEST, } Arbitrators.  
WILLIS THOMAS, }

### *Oath of Arbitrators.*

STATE OF GEORGIA, } You, and each of you, do solemnly swear, that  
Houston County. } you will impartially determine the matter of controversy existing between *John Doe* and *Richard Roe*, touching the *soundness or unsoundness of a Negro man named Sam*, submitted to you, according to law and the justice and equity of the case; without favor or affection to either party.

Sworn to and subscribed  
before me, this May 10, 1859. }

*James Mack, J. P.*

CHARLES SMITH.  
JAMES WEST.  
WILLIS THOMAS.

### *Award of Arbitrators.*

STATE OF GEORGIA, } The undersigned having met, *this day*, in the  
Houston County. } town of *Perry*, for the purpose of hearing and determining a certain matter of controversy existing between *John Doe* and *Richard Roe*, touching the *soundness or unsoundness of a Negro man named Sam*, proceeded first to the examination of the Bill of Sale for said *Negro man Sam*, by which it appears, that on the *first day of February last*, said *John Doe* sold to said *Richard Roe* said *Negro man Sam*,

for the sum of *one thousand dollars cash*. In which Bill of Sale, said *John Doe* warranted said *Negro man* to be sound and well, and a slave for life. Said *Richard Roe* then introduced *Jonas Frost*, M. D., a practising physician, who under oath, gave in evidence that he was called in professionally to visit said *Negro man Sam*, on the *fifteenth* day of *February last*; that said *Negro man Sam*, was attacked with *small-pox*, of which disease he lingered until the *twentieth* day of *February last*, on which day said *Negro man Sam* died. And said *Jonas Frost*, under oath, gave it as his professional opinion and conviction, that on the *first* day of *February last*, the date of the aforesaid Bill of Sale, the disease of *small-pox* was lurking in the system of said *Negro man Sam*, and that he was, at that time, afflicted with said disease, although it did not develope itself till after that day, and of that disease he died. And that said *Richard Roe* paid his Bill of *fifty* dollars. Said *Richard Roe* also introduced *John Smith*, who under oath, stated that he was employed by said *Richard Roe* for the purpose of attending as nurse upon said *Negro man Sam*; that said *Negro man* had every attention paid him during his illness, that his condition allowed and required, and that said *Richard Roe* paid deponent for his attendance on said *Negro man*, the sum of *thirty* dollars. Here *Richard Roe* closed his case. *John Doe* being called upon for his evidence in the case, produced *William Tims*, who under oath stated that he knew the *Negro man Sam*; that on the *first* day of *February last*, he saw said *Negro man* and conversed with him; that he did not discover that any thing was the matter with said *Negro man* on that day, nor did said *Negro man* complain of being unwell. *John Doe* introduced no other witness.

According to this statement of facts, the undersigned have determined, first, that said *Negro man Sam*, on the *twentieth* day of *February last*, died of *small-pox*; that although said disease had not shown itself to exist, nevertheless, it did exist in the system of said *Negro man* on the *first* day of *February last*, the date of the Bill of Sale; and therefore, on that day said *Negro man* was unsound of the disease of which he died. Secondly, it is determined, that said *John Doe* refund to said *Richard Roe* the sum of *one thousand dollars*, the purchase-price of said *Negro man Sam*, with interest upon said sum from the *first* day of *February last*, until paid. That said *John Doe* pay to said *Richard Roe* the further sum of *fifty* dollars, Physician's Bill for attendance on said *Negro man Sam*, with interest thereon from the *twenty-first* day of *February last*, until paid. And the further sum of *thirty* dollars, Nurse's pay, with interest thereon from the *twenty-first* day of *February last*, until paid. And the further sum of seventy-five cents to each of the witnesses sworn before the Arbitrators. And the further sum of *fifteen* dollars, *five* to each of the Arbitrators, that being the sum agreed upon by the parties: making in all the sum of one thousand and ninety-seven dollars and twenty-five cents. This *May 10, 1859*.

CHARLES SMITH,	} Arbitrators.
JAMES WEST,	
WILLIS THOMAS,	



*Order by the Court.*

In the matter of controversy concerning a certain *Negro man named Sam*, between *John Doe* and *Richard Roe*, submitted to the Arbitration of *Charles Smith*, *James West*, and *Willis Thomas*, who have proceeded to make their Award and have filed the same with the Clerk of this Court; it is, on motion, ordered, that said Award be received and entered on the minutes and be made the judgment of this Court; and that Execution issue for the sum to be paid in said Award, (against said *John Doe*,) returnable to the next term of this Court.

## CHAPTER II.

## JUSTICE OF THE PEACE.

AN ACT to carry into effect the 4th and 5th sections of the 3d Article of the Constitution of the State of Georgia.—*Approved Dec. 21, 1819.*

Justices of the  
Peace, how  
elected.

1. SEC. II. There shall be two justices of the peace in each captain's district, in the several counties of this State, who shall be elected on the first Saturday in January, 1821, and on the first Saturday in January, every fourth year thereafter, by the citizens of the district to which they respectively belong, entitled to vote for members of the General-Assembly.

Who shall  
superintend  
Elections.

Which election shall be superintended by three freeholders of the district, whose duty it shall be to take the following oath, to be administered by the captain or commanding officer of said district, or any magistrate of the county, to wit: "I, A B, do solemnly swear, that I will, to the best of my abilities, superintend the election of Justices of the Peace for this district—so help me God." And said freeholders shall transmit a return of said election, within twenty days, to his excellency the governor, who is hereby authorized to commission the person or persons, so elected accordingly.

Oath of Super-  
intendents.

Governor to  
Commission.

Term of Office.

How and for  
what re-  
moved.

Vacancy how  
filled.

And the said justices of the peace shall hold their appointments during the term of four years, and until their successors are elected and qualified, unless they shall be removed by conviction, by indictment in the superior court, for mal-practice in office, or for any felonious or infamous crime, or by the governor, on the address of two-thirds of each branch of the General-Assembly. And when any vacancy or vacancies shall happen, by death, resignation or otherwise, of any justice or justices of the peace, it shall be the duty of one justice of the peace, and two freeholders, which said freeholders, previous to holding said election, shall take the oath above prescribed, to advertise in three of the most public places in the district where such vacancy or vacancies may happen, the time of holding an election for the purpose of filling such vacancy or vacancies, and give at least fifteen days' notice of the time and place, when such election shall be held. And it shall be the duty of the said justice and freeholders, to superintend such election, and certify the same, under their hands, to his excel-

lency the governor, who shall, within ten days after receiving the same, commission the person or persons having the highest number of votes: *Provided*, the election is not contested.

*Oath of Justice of the Peace.*

STATE OF GEORGIA, } You, *James Mack*, do swear that in the office of  
*Houston County.* } Justice of the Peace, in and for the *six hundred and nineteenth* District, Georgia Militia, County aforesaid, in all and every the articles in the Commission of the peace enjoined and to you directed, you will do equal right to the poor and the rich, according to your knowledge and the laws, statutes and acts of the General-Assembly, of force in this State. You shall not be of counsel to any person in any controversy depending before you. And you shall, according to the directions of the several acts of the General-Assembly, truly account for and pay, or cause to be paid, all the fines and forfeitures which shall be recovered before you. You shall not spare any one for any gift or other cause; nor take anything for doing the business of your office of Justice of the Peace, but the fees and allowances accustomed and fixed by act of the General-Assembly. You shall not direct, nor cause to be directed, any process by you made, to the parties themselves, but to the Constables of said District and County, or other State's officers, or disinterested persons, to execute the same. And in all things, you shall well and truly do and execute the office of Justice of the Peace in said County. And you do further swear, that you will support and defend the Constitution of the State of Georgia, and the Constitution of the United States. And that you are not the holder of any public moneys unaccounted for--so help you God. This *January 10*, 1859.

Before me—*John Ragin, J. I. C.*—[See 5.]

JAMES MACK.

*Advertisement to fill Vacancy.*

On the *first Saturday in June next*, an election will be held at the Court-House in the *six hundred and nineteenth* District, Georgia Militia, County of *Houston*, for a Justice of the Peace, to fill the vacancy occasioned by the resignation of *James Mack, Esq.* This *May 10*, 1859.

SILAS RAWLS, J. P.

WILLIAM TALTON, } *Freeholders.*  
 SAMUEL FELDER, }

*Certificate of Superintendents.*

STATE OF GEORGIA, } To his Excellency *Joseph E. Brown*, Governor  
*Houston County.* } of said State.

The undersigned Superintendents of an Election held *this day* for a Justice of the Peace, in and for the *six hundred and nineteenth* District, G. M., to fill the vacancy caused by the resignation of *James Mack, Esq.*, hereby certify that the foregoing contains a correct statement of said Election. This *June 3*, 1859.

SILAS RAWLS, J. P.

WILLIAM TALTON, } *Freeholders.*  
 SAMUEL FELDER, }



AN ACT to compel the Justices of the Peace in this State, to keep a fair and regular Book of Entry.—*Approved Dec. 13, 1809.*

Book of Entry to be kept. 2. SEC. I. From and after the first day of March next, it shall be the duty of each justice of the peace in this State, to keep a fair and legible Book of Entry, of all civil proceedings had before him, for the recovery of debts, &c.

Book to be delivered to successor. 3. SEC. II. In all cases where any justice of the peace in this State, shall resign or remove out of the limits of the district for which he shall have been appointed, it shall be the duty of such justice to deliver said Book, or a fair copy thereof, to his successor in office, within sixty days after he may be commissioned, or deposit the same with the clerk of the inferior court.

Act to amend the Judiciary Act of this State, so far as respects Justices of the Peace.—*Approved Dec. 9, 1819.*

Non-resident Plaintiffs required to deposit the Cost. 4. From and after the passage of this act, it shall and may be lawful for all and every justice of the peace in this State, (on application of any non-resident of the county or State,) for any civil process, to require said non-residents to deposit the cost, or give sufficient security for the same. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to authorize any Justice of the Inferior Court of the County, to administer the oath of office to Justices of the Peace.—*Approved Dec. 11, 1858.*

One Justice of the Inferior Court may qualify Justice of the Peace. 5. SEC. I. That all justices of the peace who may be hereafter elected in this State, may take the oath of office before any justice of the inferior court, of the county for which they may have been elected. And the governor is hereby authorized to issue his *dedimus potestatem*, accordingly.—

SEC II.—[Repeals conflicting laws ]

## CONSTABLE.

AN ACT to make Constables elective by the people ; and the mode of taking their Bonds ; and to point out their duty in certain cases.—*Approved Dec. 22, 1829.*

Constables elected by the people annually. 6. An election shall be held at the place of holding justices' courts, in each captain's district, on the first Saturday in January, of each and every year, by persons entitled to vote for members of the General-Assembly ; for at least one and not more than two constables. Which election shall be superintended by at least one of the justices of the peace and two freeholders ; who shall hold his or their appointments until the first Saturday in January next thereafter, and until his or their successor is elected and qualified.

Oath taken and Bond given. 7. SEC. II. Before any constable shall enter on the duty of his appointment, he shall take the usual oath and enter into the usual bond, to be approved of by the justice or justices of the peace of their respective districts.—[See 10 and 20.]

Election failing, new one to be held and how. 8. SEC. III. When an election should fail to be held at the time aforesaid, or a vacancy should happen, it shall be the duty of the justice or justices aforesaid to advertise an election in three of the most public places in their district, giving at least ten days' notice of the time and place ; which shall be conducted in the same manner as aforesaid. And who shall hold his or their appointment until the first Saturday in January next thereafter, and until his or their successors is elected and qualified.—[See 12 and 14.]

9. SEC. IV. Whenever notes for collection shall be placed in the hands of the constable, it shall be his duty to grant receipts for the same, and pay over the amount when collected to the plaintiff, or his, her or their agent or attorney, unless there should be conflicting claims; it shall then be the duty of the constable to report the same to the next justices' court of said district, subject to the order of said court.

Must receipt  
for Notes, and  
account for  
moneys col-  
lect'd thereon.

SEC. V. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT for the appointment of County Officers.—*Approved Feb. 16, 1799.*

10. SEC. V. And shall also take the following oath before a justice of the inferior court or justice of the peace: "I do solemnly swear, (or affirm,) that I will duly and faithfully perform, all the duties required of me as constable of the county of \_\_\_\_\_, according to the best of my abilities and understanding." And where it shall so happen that no fit and proper person or persons offer themselves as candidates, the said court [*Inferior Court*] shall pass an order directing the justices in any district, or one of them, to draw not exceeding two persons from such company, to serve as aforesaid; who shall be liable to a fine of forty dollars, to be levied by order of said inferior court, on refusal to act, or procure some other person to serve for him.—[*See 14.*]

Oath of Con-  
stable.

No candi-  
dates, Justices  
of the Peace  
may appoint.

AN ACT to alter and amend the several Judiciary Acts now in force in this State, so far as relates to Justices' Courts.—*Approved Dec. 14, 1811.*

11. SEC. XXVI. The justice or justices in any district having no constable, is or are, hereby authorized and empowered to appoint not exceeding two fit and proper persons within the said district, to whom they shall administer the oath of office; who shall give bond and security as pointed out by law. And the person or persons so appointed, shall continue in office until the next inferior court, and until a successor is duly appointed and qualified.—[*See 12.*]

No Constable  
in District,  
Justice may  
appoint.

AN ACT to amend an act entitled "an act to make Constables elective by the people, and the mode of taking their bonds; and to point out their duty in certain cases."—*Approved Dec. 20, 1834.*

12. From and after the passage of this act, it shall and may be lawful for the justices of the peace in the several militia districts in this State, or either of them, in the absence of the others, to appoint constables for special purposes, or to meet sudden emergencies; in cases where the constable, elected by virtue of the act aforesaid, shall be absent from the district for which he was elected; or shall, from providential causes, be disabled or prevented from discharging the duties of his office.

Justice may  
appoint Con-  
stables for  
special occa-  
sions.

13. SEC. II. Nothing in this act shall be so construed as to authorize justices to appoint or deputize constables, in any case or cases whatever, except those before specified.—[*See 12, 14 and 15.*]

And not  
otherwise.

SEC. III. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to authorize Justices of the Peace in this State, to appoint Constables, in certain cases therein named.—*Approved Dec. 28, 1838.*

14. SEC. I. *Be it enacted,* That whenever any vacancy in the office of constable shall occur in any militia district in this State, by death, removal or otherwise, it shall and may be lawful for the justices of the peace of the district, where such vacancy may occur, to appoint some fit and proper person to act as constable for such district, till a successor may be elected and qualified, as is now required by law.

Vacancy may  
be filled tem-  
porarily.



And in case of  
sickness and  
excess of busi-  
ness.

15. SEC. II. When the constable of any district may be unable to perform the duties of his office, from sickness or other disability; or on account of the amount of business being so great that it cannot be done in due time by the constable of the district, the justices of said district may appoint some suitable person to act as constable for such district, during such disability.

Bond and se-  
curity must be  
given, etc.

16. SEC. III. All persons appointed to act as constables by virtue of this act, shall give bond and security, (and be sworn,) for the faithful performance of their duties, as constables are now required by law to do.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### Constable's Bond.

STATE OF GEORGIA, }

Houston County. }

We, *John Doe* as principal, and *Richard Roe* and *John Smith* as securities, all of the State and county aforesaid, acknowledge ourselves held and bound to *John Ragin, John D. Winn, William F. Postell, William T. Swift and Charles Anderson*, Justices of the Inferior Court of said County, and their successors in office, in the sum of *five hundred* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* has been *elected* Constable in and for the *six hundred and nineteenth* district, Georgia Militia, in said County: now, should the said *John Doe* truly and faithfully discharge the duties of his said office (during the time of his continuance in office), as required by law, then this obligation to be void; else, of force. This *January 10, 1859*.

Approved—  
*James Mack, J. P.* }  
*Henry Ross, J. P.* }

JOHN DOE, *prin'l.* [L. S.]  
RICHARD ROE, *sec'ty.* [L. S.]  
JOHN SMITH, *sec'ty.* [L. S.]

NOTE.—The above Form, with some simple alterations (which will readily suggest themselves), will be sufficient, whether the Constable be *elected* or *appointed*. If the Constable be *appointed*, an entry to that effect should be made in the Docket-Book of the Justice of the Peace making the appointment; this should be observed whether the person be appointed to fill a vacancy, or on a special occasion.

For Constable's Oath, see 10.

AN ACT to authorize suit to be brought upon Constables' Bonds, without order of Court.—*Approved Dec. 22, 1857.*

Constable's  
Bond may be  
sued upon  
without order.

16.\* SEC. I. That from and after the passage of this act, it shall and may be lawful for any person who may have been, or may hereafter be injured by the misconduct or neglect of duty of any constable, of any county of this State, to bring suit upon such constable's bond, in any court having jurisdiction thereof, for the use of such person so injured, without first obtaining an order of court, as now required by law.

### Return of Superintendents of Election.

STATE OF GEORGIA, }

Houston County. }

To the Inferior Court of said County.

The undersigned, Superintendents of an election for Constable, held in and for the *six hundred and nineteenth* District, Georgia Militia, *this day*, certify that *John Doe* was duly and lawfully elected to that office,

and has given Bond and taken the oath of office, agreeably to law. This *January* 10, 1859.

*Given under our hands and official signatures.*

JAMES MACK, J. P.  
ROBERT RIX, *freeholder*, } *Super'ts.*  
JOHN WALL, *freeholder*, }

### *Order of the Inferior Court.*

It appearing by the return of the Superintendents of an election held on the *tenth day of January last*, for Constable in and for the *six hundred and nineteenth* district, Georgia Militia, in said county, that *John Doe* was duly elected to that office, and has given Bond and security, and taken the oath of office, agreeably to law, it is ordered, that said *John Doe* be and he is hereby recognized as Constable in and for said District and County, and that said return, and the Bond of said *Richard Roe* be filed in the Clerk's office of this Court, and recorded.

NOTE.—The Constable should apply to the Clerk and procure from him a certified copy of the above order.—*See* 17.

### *Clerk's Certificate.*

STATE OF GEORGIA, }  
Houston County. } I do hereby certify, that the within is a correct transcript from the Minutes of the Inferior Court of said County, of the facts therein contained. This *January* 10, 1859.  
[Seal.] JOHN H. KING, C. I. C.

### *Levy by Constable where there is no personal property.*

There being no personal property of the Defendant to be found in this County, on which to levy this *fi. fa.*, I have this day levied the same on lot of Land number *forty-nine*, in the *tenth* district of *Houston* County (as the property of Defendant), and given *Charles Smith*, the person in possession, due notice of said levy. This *May* 1, 1859.

JOHN JACOBS, *Constable*.

NOTE.—The *fi. fa.* and notice must be turned over to the Sheriff.

### *Notice of Levy.*

STATE OF GEORGIA, }  
Houston County. } To *Charles Smith*—You are hereby notified that I have this day levied a *fi. fa.* issued from the Justices' Court, in favor of *Samuel Webb* against *James Jones*, upon lot of land number *forty-nine*, in the *tenth* district of *Houston* County, as the property of the Defendant. *May* 1, 1859.

JOHN JACOBS, *Constable*.

NOTE.—The above Notice must be served on the person in possession within five days after the levy is made.



*Constable's Sale.*

STATE OF GEORGIA, } On *Saturday*, the *sixteenth instant*, will be sold,  
     *Houston County.* } before the Court-House door, in the *six hundred*  
*and nineteenth District, G. M., between the lawful hours of sale, one*  
*Black Horse, about eight years old, sixteen hands high, well broke.* Levied  
 on as the property of *John Doe* to satisfy a *fi. fa.* issued from the Justices' Court, in favor of *Richard Roe.* This *May 1, 1859.*

JOHN JACOBS, *Constable.*

AN ACT relative to Constable's Bonds, and to regulate the proceedings thereon.—*Approved Feb. 11, 1850.*

Certificate of  
filing bond  
must be had.

17. SEC. I. *Be it enacted*, That from and after the passage of this act, that all constables hereafter to be elected in this State, shall before he enters upon the discharge of his official duties, receive a certificate from the clerk of the inferior court, that his bond has been filed in the clerk's office, as now required by law. And that the official acts of any constable before filing of his bond and receiving a certificate, according to the provisions of this section, shall be illegal and void.—[*See 20.*]

Certain acts  
void.

SEC. II. All laws and parts of laws militating against this act be, and the same are hereby repealed.

AN ACT to extend the powers of Sheriffs and Constables, in certain cases.—*Approved Dec. 19, 1818.*

Itinerant persons may be followed and arrested.

18. SEC. II. It shall be lawful for any constable, and he is hereby required, in all cases where a bail or criminal process is placed in his hands, and the person against whom the same may be, is moving about from one district to another, to serve the said process in any district within the county in which he may be a constable.

Amount of  
Constable's  
Bond.

19. SEC. III. Each and every constable shall give bond with two or more securities, to be judged of by the justices of the peace in their respective districts, in the sum of \$500 (unless said district be in a town, and in that case \$1000), for the faithful performance of the duties of their office of constable.

AN ACT to amend the Vth section of an Act for the Appointment of County Officers.—[Act of 1799 repealed.]—*Approved Dec. 13, 1816.*

*Whereas*, the said Vth section of the act aforesaid, points out the mode of appointing constables for the several counties in this State, and directs the manner of their giving bonds, but points out no mode by which the bonds can be sued, in case of the neglect of duty in said constables; for remedy whereof—

Constable's  
Bonds, how  
taken and  
sued on.

20. *Be it enacted*, That all constables hereafter appointed, shall before they enter upon the duties of their appointments, take the oath prescribed by the said Vth section of the act above-recited, before any justice of the inferior court or justice of the peace. (And those constables resident in the cities of Augusta and Savannah shall give bond, with two or more good and sufficient securities, in the sum of \$400 [*see 19*], to the justices of the inferior courts of the counties of Richmond and Chatham, conditioned for the true and faithful discharge of the duties of their office.) And all other constables shall give bond in the sum of \$200 [*see 19*], for the faithful discharge of the duties of their office, payable to the justices of the inferior courts of the respective counties. Which bond, or bonds, so given, shall be deposited in the clerk's

office of the inferior courts of the respective counties in this State [see 17], and be taken by or before any justice of the peace; and may be sued by order of the inferior court, upon the application of any person or persons who shall make it satisfactorily appear that they have been injured by the misconduct or neglect of duty in said constable. Which suit shall be brought in the superior courts, for the use of the person or persons so injured. Any law to the contrary notwithstanding.

AN ACT to authorize Constables of this State to serve Processes, and to perform other acts pertaining to their office, in any District, in certain cases therein specified.—*Approved Dec. 22, 1840.*

21. SEC. I. *Be it enacted*, That from and after the first day of January next, in all cases where suit or suits are commenced in any of the justices' courts of this State, against any joint-obligors or promissors, it shall be lawful for the constable of the district in which such suit or suits are commenced, to serve all processes on all of the parties, and do all others legal acts which may be required of them, in the progress of such suit or suits; in any district or districts in the county in which such suit or suit may be commenced.

Co-obligors may be served by the Constable of the District, although they may reside out of it.

SEC. II. That all laws and parts of laws to the contrary, be and the same are hereby repealed.

LAWS RELATING TO BOTH JUSTICES AND CONSTABLES.

AN ACT more effectually to compel Justices of the Peace and Constables to pay over moneys received or collected by them in their official capacities.—*Approved Dec. 22, 1820.*

22. Justices of the Peace shall be so far considered officers of the superior court, as to be subject to be ruled, under similar regulations as are customarily pursued in relation to any other officer of said court, when they shall refuse or neglect to pay over any moneys which they may have received or collected in their official capacity.—[*See 24.*]

Justices may be ruled.

23. SEC. II. Constables shall be subject to be ruled by their respective justices' courts, and compelled to give an account of their actings and doings, or pay over moneys which they may have received or collected in their official capacity, under the same regulations as are pursued in the superior court, in relation to officers of said court.—[*See next Act.*]

Constables may be ruled.

AN ACT to amend an act "More effectually to compel Justices of the Peace and Constables to pay over moneys received, or collected, by them in their official capacity," passed 22d Dec., 1820.—*Approved Dec. 21, 1839.*

24. SEC. I. *Be it enacted*, That the Justices of the Peace shall be so far considered officers of the superior court, as to be subject to be ruled, under similar regulations as are customarily pursued in relation to any other officer of said court, when they shall refuse or neglect to pay over any moneys which they may have received or collected in their official capacity: *Provided*, that in case the rule cannot be served upon the justice or justices during the term of the superior court at which the rule is granted, that it may be lawful to serve the same during the vacation, and be held and considered returnable to the next term of said court. Any law to the contrary notwithstanding.

How Justices may be ruled.

Rule how served.



## JUSTICES' JURISDICTION IN CRIMINAL MATTERS.

## ASSAULT AND BATTERY.

- Assault. An Assault is an attempt to commit a violent injury on the person of another.—*Cobb's Penal Code*, 85.
- Battery. Battery is the unlawful beating of another.—*Cobb's Penal Code*, 86.

*Affidavit of the injured party.*

STATE OF GEORGIA, } Before the undersigned, a Justice of the Peace  
 Houston County. } in and for said County, personally appeared *John Doe*, who being duly sworn, saith, that *Richard Roe*, in said County, on the *first* day of *May*, eighteen hundred and *fifty-nine* made a *violent* Assault upon him, (deponent,) and then and there beat him.

Sworn to and subscribed,  
 before me, this *May 2*, 1859.  
*James Mack, J. P.*

JOHN DOE.

NOTE.—The affidavit is not necessarily a part of the Warrant, but it is best in every case, that it should accompany the warrant in order that its legality may appear to the officers who may be required to act under it.

*Warrant.*

STATE OF GEORGIA, } To all lawful officers to execute and return.  
 Houston County. }

Whereas, complaint on oath, has been made before the undersigned, one of the Justices of the Peace of the County aforesaid, by *John Doe* that *Richard Roe*, in said County, on the *first* day of *May*, eighteen hundred and *fifty-nine*, did make a *violent* Assault upon deponent, and then and there beat him. These are, therefore, to command you, forthwith, to arrest the said *Richard Roe*, and bring him before me, (or some other Justice of the Peace, for said County,) to answer the said complaint, and to be dealt with as the law directs. Herein fail not.

*Witness my hand and seal, this May 2*, 1859.

JAMES MACK, J. P. [L. S.]

NOTE.—If the application be for a Warrant for Assault only, omit “and then and there beat him,” in the Affidavit and Warrant. The Warrant may be made returnable before the Magistrate who issued it; in such case, omit “or some other Justice of the Peace for said County.”

*Constable's Return endorsed on the Warrant.*

Executed the within by arresting the body of *Richard Roe*, who is now in my custody. This *May 3*, 1859.

JOHN JACOBS, Constable.

NOTE.—As soon as convenient, after the arrest, the Constable should carry the accused before the Justice who issued the Warrant, if it be returnable before him, or any Justice of the Peace, if the Warrant be not so returnable. These directions apply in all cases of Warrants by Justices of the Peace.

For the Defence which the accused may make, see *Cobb's Penal Code*, 11 and 12. If the Justice believes the complaint to be well founded and properly supported, (of which, to

be the better able to judge, he ought to hear the evidence on both sides, and if necessary, to give reasonable time to produce it,) he must bind over the accused, to appear at the next term of the Superior Court of the County; or if he fails to give Bond, he must commit him to Jail. If he commits, the prosecutor must *first* give Bond and security to prosecute. [See 29.]

*Commitment (where the party fails to give security.)*

STATE OF GEORGIA, } To *John Jacobs*, one of the Constables for the  
Houston County. } County aforesaid, and to the Keeper of the Jail of  
said County.

These are to command you, in the name of the said State, forthwith to convey and deliver into the custody of the Keeper of the said Jail, the body of *Richard Roe*, charged before me, on the oath of *John Doe*, with having on the *second* day of *May last*, in the County aforesaid, committed *Assault and Battery*, upon the person of him, the said *John Doe*. And you, the keeper of the said Jail, are hereby required to receive the person of the said *Richard Roe*, (he having failed and refused to give bail for his appearance, as required by law,) into your custody in the said Jail, and him there safely keep, until he be thence delivered by due course of law.

Witness my hand and seal, this *May 3*, 1859.

JAMES MACK, J. P. [L. S.]

NOTE.—The above Form of Commitment will answer in all cases. Where the Prisoner is Committed on a charge of *Felony*, the Warrant of Commitment must be signed by two Justices. The Prisoner may be bailed in a variety of cases, but where the charge is Murder, etc. he *must* be Committed; for in such cases, Justices of the Peace are not allowed to bail.

*Appearance Bond Given by the Accused.*

STATE OF GEORGIA, } We, *Richard Roe*, as principal, and *Thomas*  
Houston County. } *Gurr*, as security, both of said State and County,  
acknowledge ourselves held and bound to his Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of *five hundred* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *Richard Roe* has been arrested by virtue of a Warrant for *Assault and Battery*, issued at the instance of *John Doe*. And whereas, *James Mack*, a Justice of the Peace, in and for said County, before whom said Warrant was returned, upon the hearing thereof, required said *Richard Roe*, to give Bond and security in the sum of *five hundred* dollars, for his personal appearance at the next term of the Superior Court, to be held in and for said County. Now, should said *Richard Roe*, well and truly, personally, be and appear at the next Superior Court to be held in and for the said County, on the *fourth* Monday in *October* next, to answer such matters as shall be then and there charged against him by *John Doe*, concerning *Assault and Battery*, committed by him the said *Richard Roe*, on him the said *John Doe*, and do not thence depart without leave of said Court, then this obligation to be void; otherwise of force. This *May 3*, 1859.

Approved—

*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]

THOMAS GURR, *sec'ty.* [L. S.]

NOTE.—The above form, with suitable alterations, will answer in all cases where the accused is bound over.



*Warrant for Affray.*

STATE OF GEORGIA, { In person appeared before the undersigned, a  
 Houston County. } Justice of the Peace, in and for said County,  
*John Doe*, who, being sworn, saith, that on the *first* day of *May*,  
 eighteen hundred and *fifty-nine*, in the *town of Perry*, in said County,  
 (the same being a public place,) *Richard Roe* and *John Smith*, in a  
 tumultuous manner, then and there committed an affray, by fighting  
 together, to the terror of the citizens and disturbance of the public  
 tranquility.

Sworn to and subscribed,  
 before me, this *May 2*, 1859. }

*James Mack, J. P.*

JOHN DOE.

STATE OF GEORGIA, { To any lawful officer to execute and return.  
 Houston County. }

Whereas, *John Doe* hath, *this day*, made oath before the undersigned, a Justice of the Peace, in and for said County, that, on the *first* day of *May*, eighteen hundred and *fifty-nine*, in the *town of Perry*, in said County, (the same being a public place,) *Richard Roe* and *John Smith*, in a tumultuous manner, then and there committed an Affray, by fighting together, to the terror of the citizens and disturbance of the public tranquility. These are, therefore, to command you, forthwith to apprehend the said *Richard Roe* and *John Smith*, and bring them before me, or some other Justice of the Peace for said County, that they may be dealt with as the law directs. Herein fail not, and have you then and there this Writ.

*Witness my hand and seal, this May 2, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—When the accused parties are arrested and brought before the Justice of the Peace, the proceedings are the same as in the preceding case of Assault and Battery. The amount of Bail is in the discretion of the Magistrate, who must be careful that it is not excessive.

*Recognizance to appear and give Evidence.*

STATE OF GEORGIA, { We, *John Doe*, as principal, and *Richard Roe*,  
 Houston County. } as security, both of the County and State afore-  
 said, acknowledge ourselves indebted to his Excellency *Joseph E.*  
*Brown*, Governor of said State, for the time being, and his suc-  
 cessors in office, in the sum of *five hundred* dollars; subject to the  
 following condition—

The condition of the above obligation is as follows—should the above bound *John Doe*, personally be and appear at the next Superior Court, to be held in and for said County, on the *fourth* Monday in *October* next, then and there to give Evidence in behalf of the *State*, on a Bill of Indictment, then and there to be preferred, (or now there-  
 in pending, as the case may be,) against *John Smith*, who is charged with the offence of *Assault and Battery*, and not depart thence without leave of the Court, then this obligation to be void; otherwise, of force. This *May 1*, 1859.

Approved—  
*James Mack, J. P.*

JOHN DOE, prin'l. [L. S.]  
 RICHARD ROE, sec'ty. [L. S.]

NOTE.—The presiding Magistrate (if the accused party be committed or bound over,) may, and perhaps should bind over the Witnesses, (both for the State and for the accused,) that have been sworn and examined in the trial before him; but they are not required to give security.

*Warrant for Good Behaviour.*

STATE OF GEORGIA, }  
Houston County. } To any lawful officer to execute and return.

Forasmuch as the undersigned, one of the Justices of the Peace, in and for said County, is given to understand, by the information testimony and complaint of many credible persons, on oath, that *John Doe*, of the County aforesaid, is not of good name and fame, nor of honest conversation, but is an evil-doer, rioter, barrator and disturber of the peace of the State; so that murders, homicide, strife and other grievances and damages against the citizens of this State, concerning their bodies, are likely to arise thereby. These are, therefore, to command you, and every of you, that you arrest the person of the said *John Doe*, and have him before me, (or some other Justice of the Peace for said County,) as soon as he can be taken, to find sufficient sureties for his good behavior towards this State and all the citizens thereof. Herein fail not, and have you *before me*, this Writ.

Witness my hand and seal, this May 1, 1859.

JAMES MACK, J. P. [L. S.]

NOTE.—For the authority of Justices of the Peace to issue Warrants for Good Behavior, see Cobb's Penal Code, 20–21. Warrants of this description may be issued by a Justice of the Peace, upon his own motion; in such case the Justice should examine witnesses as to the character and conduct of the accused. And Warrants for Good Behavior may issue upon the affidavit of any person who will complain of the conduct and character of the accused. The Justice may make the Warrant returnable before himself, or other Justice. The testimony should be reduced to writing, and with the other papers of the case, returned to the Superior Court. The amount of the Bond and Security to be given, is in the discretion of the Justice—it must not be excessive.

*Affidavit for Warrant to Keep the Peace.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } Justice of the Peace, in and for said County,  
*Richard Roe*, who being sworn says, that he is in fear of *death*, by  
*John Doe*, of said County. And deponent further says, that he does  
not require surety of the peace against said *John Doe*, out of malice,  
or for mere vexation, but for the cause aforesaid.

Sworn to and subscribed,  
before me, this May 1, 1859.  
*James Mack, J. P.* }

RICHARD ROE.

NOTE.—The cause assigned in the foregoing Affidavit, is the fear of *death*, entertained by the Deponent. Warrant to Keep the Peace, may issue, whenever the party will swear that he is in fear of some injury to be done him *personally*, or some injury to be done to his *property*; as that the party accused, will *beat* him, or *burn* his house, etc., or procure the act to be done by another. The Affidavit must distinctly specify the injury apprehended.

*Warrant.*

STATE OF GEORGIA, } To any lawful Officer to execute and return.  
Houston County. } Forasmuch, as *Richard Roe*, hath personally  
come before the undersigned, one of the Justices of the Peace, in and



for said County, and made oath, that he, the said *Richard Roe*, is afraid that *John Doe*, of said County, will *kill* him, and hath, therefore, prayed surety of the peace against him, the said *John Doe*. And that he, the said *Richard Roe*, does not require surety of the peace against him, the said *John Doe*, out of malice, or for mere vexation, but for the cause aforesaid. These are, therefore, to command you, and each of you, that immediately upon receipt hereof, you bring the said *John Doe* before me, (or some other Justice of the Peace for said County,) to find surety, as well for his personal appearance at the next *Superior Court* to be held in and for said County, as also, for his keeping the peace in the mean time, towards the State and all the citizens thereof, and chiefly towards the said *Richard Roe*.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

### *Bond and Security to Keep the Peace.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *John Smith* as  
                   *Houston County.* } security, both of the County and State aforesaid,  
 acknowledge ourselves held and bound to his Excellency *Joseph E. Brown*, Governor of said State for the time being, and his successors in office, in the sum of *five hundred* dollars; subject to the following condition—

The condition of the above obligation is as follows—should the above-bound *John Doe*, personally be and appear at the next *Superior Court* to be held in and for said County, on the *fourth* Monday in *October* next, to do and receive what shall, then and there, be enjoined him by said Court, and in the mean time, keep the peace towards this State and all the citizens thereof, and especially towards *Richard Roe*, then the above obligation to be void; else, of force. This *May 1, 1859*.

Approved—  
 James Mack, J. P.

JOHN DOE, *prin'l.* [L. S.]  
 JOHN SMITH, *sect'y.* [L. S.]

NOTE.—The accused party has the right of being heard before the Justice of the Peace, and of controverting the proof against him.—*Cobb's Penal Code*, 22. For what causes the Bond may be forfeited.—*Ibidem*. The evidence taken in the case must, with the other papers, be sent to the Court.

AN ACT regulating the proceedings on Bonds taken for the Security of the Peace, and for other purposes.—*Approved Dec. 24, 1827.*

Magistrate  
 taking Bond  
 for Surety of  
 the Peace  
 must return  
 the same.

To what  
 Court return-  
 able.

25. In all cases where any judge of the inferior court or justice of the peace, shall take a bond or bonds for the security of the peace; or where any such judge or justice shall commit any person or persons, charged with an intent to violate the peace, to the common jail of the county, or any other place of confinement, on account of the unwillingness or inability of such person or persons to give such bonds, that then and in such case, it shall be the duty of the said judge or justice, forthwith to make a return of such bond, together with the affidavit or affidavits, and other evidence, on which the said bond was required. Or in case of no bond, to make a return of the affidavits and evidence on which the person or persons were committed to jail, to the next term of the superior, inferior or city-court, which may first thereafter hold their sittings. And

it shall be the duty of the officer prosecuting for the State in the said court, on the first day of the said term, or as soon thereafter as he can be heard, to move the judge or judges presiding in the said court, to take the same into consideration. And it shall be the duty of the said judge or judges, when the case is so presented to him or them, to examine the evidence so returned and presented, and if thereupon he shall be of opinion that there was no sufficient ground for requiring such bond, or for the imprisonment of such person or persons, then and in such case, the said judge or judges, are hereby required to cause the bond or bonds so taken, to be cancelled; or to discharge the said person or persons from confinement, as the case may be. And if he shall be of opinion that there was no reasonable ground for requiring such bond or bonds, to order and direct that the prosecutor shall pay all the costs and expenses of the said proceedings; which costs shall be collected and recovered in the same manner as fees of witnesses are: *Provided*, that if the said judge or judges shall have any doubt upon the evidence presented, he or they may receive additional affidavits from either of the parties, touching the conduct of the parties, in relation to the causes from which such proceedings originated.

Duty of prosecuting officer.

Duty of the Judge.

Prosecutor may be compelled to pay the Costs.

Additional proof may be received.

AN ACT to alter and amend the several Judiciary Acts now in force in this State, so far as relates to Justices' Courts.—*Approved Dec. 14, 1811.*

26. SEC. X. Where any person or persons, charged with any offence, and brought before a justice or justices of the peace, shall be discharged for want of sufficient cause of commitment, the justice or justices, may in his or their discretion, discharge the party with cost, or direct the cost to be paid by the prosecutor.

Costs in criminal cases, at the discretion of the Justice.

AN ACT to regulate the action of Magistrates upon Peace Warrants.—*Approved Feb. 21, 1850.*

*Whereas*, it is the practice of justices of the peace to grant peace-warrants upon an affidavit being made according to law, and of binding or committing the accused party without a hearing, which is contrary to justice; for remedy whereof—

27. SEC. I. *Be it enacted*, That hereafter, when peace-warrants are granted upon such principles as the law now prescribes, that after the party is arrested and brought before the magistrate or committing officer, the party in arrest shall be permitted to introduce testimony, in order to show there is no just ground for the warrant.

Party arrested may introduce proof.

NOTE.—The Magistrate before whom the proceedings take place, must reduce the testimony to writing, and certify the same to the Court to which the proceedings are made returnable by law; that is, the next Superior, Inferior or City-Court, (as the case may be.) that is in session after the proceedings take place.

### *Supersedeas.*

STATE OF GEORGIA, } *James Mack*, one of the Justices of the Peace in  
Houston County. } and for said County, to the Sheriff, Constables  
and other Ministers and Citizens of said State.

Forasmuch as *John Doe* hath personally been before me, and hath found sufficient surety; that is to say, *Philip Doe* and *Charles Smith*, both of said County; each of whom hath undertaken for the said *John Doe* (against whom a Warrant for *Assault and Battery* hath been issued) under the pain of one hundred dollars. And he the said *John*



*Doe* hath undertaken for himself, under the pain of *two hundred* dollars, that he will personally be and appear at the next *Superior Court*, to be held in and for said County, then and there to do and receive what shall be enjoined him by the said Court, and in the meantime shall well and truly keep the peace towards the said State and all the citizens thereof, and especially towards *Richard Roe*. These are, therefore, to command you and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means, for the cause aforesaid, to molest the said *John Doe*. And if you have, for the said occasion and none other, taken and imprisoned him, that then, him you deliver, or cause to be delivered and set at liberty, without delay.

*Witness my hand and seal, this May 2, 1859.*

JAMES MACK, J. P. [L. S.]

### *Warrant for Burglary.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
     *Houston County.* } Justice of the Peace in and for said County, *John Doe*, who being duly sworn, deposeth and saith, that on the *tenth* day of *April last past*, in the *night-time*, the dwelling-house of him the said *John Doe*, in the County aforesaid, was feloniously and burglariously broken open and robbed of property of the value of *fifty* dollars; of the goods and chattels of him the said *John Doe*, feloniously and burglariously stolen and carried away from thence. And deponent further saith, that he hath just cause to suspect and does suspect, that *Richard Roe* of said County, the said felony and burglary did commit.

Sworn to and subscribed,  
 before me, this *May 1, 1859*, }  
     *James Mack, J. P.*

JOHN DOE.

STATE OF GEORGIA, } To all lawful officers to execute and return.  
     *Houston County.* }

Forasmuch as *John Doe* hath this day, made oath before the undersigned, one of the Justices of the Peace in and for said County, that on the *tenth* day of *April last past*, in the *night-time*, the dwelling-house of him the said *John Doe*, in said County, was feloniously and burglariously broken open and robbed of property of the value of *fifty* dollars, of the goods and chattels of him the said *John Doe*, feloniously and burglariously stolen and carried away from thence. And the said *John Doe* further swears, that he hath just cause to suspect and does suspect that *Richard Roe* of said County, the said felony and burglary did commit. These are, therefore, to command you, that immediately upon sight hereof, you do apprehend the said *Richard Roe*, and bring him before me, or some other Justice of the Peace of said County, to answer the premises, and to be further dealt with as the law directs. Herein fail not.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

*Commitment for Felony by two Justices.*

STATE OF GEORGIA, } By *James Mack* and *Thomas Ross*, Justices of  
*Houston County.* } the Peace in and for said County, to *John Jacobs*,  
 one of the Constables of said County, and to the Keeper of the com-  
 mon Jail of said County.

Whereas, *Richard Roe*, of said County, has been arrested on a sus-  
 picion of Burglary, committed by him the said *Richard Roe*, in felonil-  
 ously and burglariously breaking and entering, in the *night-time*, the  
 dwelling-house of *John Doe*, in said County, on the *tenth* day of *April*  
*last past*, and stealing and carrying away from said dwelling-house, *fifty*  
*dollars'* worth of property, of the goods and chattels of said *John Doe*,  
 (feloniously and burglariously stolen and carried away from thence.)  
 Whereupon, the said *Richard Roe* hath been duly examined before us  
 concerning the same, and the examination before us taken, doth in-  
 duce a strong presumption that said *Richard Roe* is guilty of the charge  
 made against him. These are, therefore, to command you, the said  
 Constable, safely and securely to convey the said *Richard Roe* to the  
 Keeper of the Jail of said County ; and you the said Jailer, to receive  
 the said *Richard Roe* into your custody in said Jail, there to remain  
 till he be delivered by due course of law.

*Witness our hands and seals, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]  
 THOMAS ROSS, J. P. [L. S.]

*Note.*—The officer before whom the proceedings take place, should associate with him  
 on the arrest of the accused party, another Justice, and all the subsequent proceedings  
 should appear in the name of both.

*Recognizance to prosecute and give Evidence.*

STATE OF GEORGIA, } Be it remembered, that on the *first* day of *May*,  
*Houston County.* } eighteen hundred and *fifty-nine*, *John Doe* and *John*  
*Smith*, both of said County, personally came before the undersigned  
 one of the Justices of the Peace in and for said County, and acknowl-  
 edged themselves to owe to his Excellency *Joseph E. Brown*, Governor  
 of said State, for the time being, and his successors in office, the sum  
 of *five hundred* dollars, to be levied of their goods and chattels, lands  
 and tenements, to the use of the said State, if he, the said *John Doe*,  
 shall fail in the condition underwritten.

JAMES MACK, J. P. [L. S.]

The condition of the above-written Recognizance is such, whereas,  
 one *Richard Roe*, late of *Macon County*, in said State, was this present  
 day, brought before the aforesaid Justice of the Peace, at the instance  
 of the above bound *John Doe*, and was by him charged with the of-  
 fence of *Assault and Battery*, in the County first aforesaid, and there-  
 upon was committed by said Justice, (for want of bail) to the common  
 Jail of the County first aforesaid. If, therefore, the said *John Doe* shall  
 and do, at the next Superior Court, to be held in and for the County  
 first aforesaid, on the *fourth* Monday in *October* next, prefer or cause to  
 be preferred, a Bill of Indictment, of the aforesaid charge, against said  
*Richard Roe* ; and shall then, also, give evidence there concerning the



same, as well to the Jurors that shall then inquire of the said charge, as also, to them that shall pass upon the trial of the said *Richard Roe*, that then this Recognizance to be void; otherwise of force.

### *Bond to Prosecute.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *William H. Tal-*  
*Houston County.* } *ton* as security, both of the State and County afore-  
 said, acknowledge ourselves held and bound to his Excellency *Joseph*  
*E. Brown*, Governor of said State for the time being, and his successors  
 in office, in the sum of *five hundred* dollars; subject to the following  
 condition—

The condition of the above obligation is as follows—whereas, the above-bound *John Doe*, heretofore procured the issuing of a Warrant for *Assault and Battery* against *Richard Roe*; and said *Richard Roe* having been arrested by virtue of said Warrant, and brought before *James Mack*, one of the Justices of the Peace in and for said County, who after hearing evidence against and for the accused, required the accused to give Bond and security for his appearance at the next term of the Superior Court, to be held in and for said County. And said *Richard Roe* having failed to give Bond and security, as required, is, by said Justice of the Peace about to be committed to Jail. Now, should said *John Doe* well and truly, be and appear at the Superior Court, to be held in and for said County, on the *fourth* Monday in *October* next, and then and there prefer a Bill of Indictment against said *Richard Roe*, for the offence aforesaid, and well and truly prosecute said Bill of Indictment to its final issue, then this obligation to be void; otherwise of force. This *May 1*, 1859.

Approved—  
*James Mack, J. P.*

JOHN DOE, *principal.* [L. S]  
 WILLIAM H. TALTON, *security.* [L. S.]

AN ACT to authorize the Justices of the Inferior Courts of this State, to discharge Insolvent Debtors confined by process from any Court of this State whatever. And to authorize Magistrates to require Bond to prosecute in criminal cases.—*The original act passed Dec. 10, 1803.*—[*Caption amended by act of Feb'y 23, 1850.*]

And whereas, it often happens that prisoners, debtors and criminals, are committed and sent to jails in other counties than those to which they belong, and in which they ought of right to be confined, to the great injury of the county to which they are so committed; as the criminals, in particular, are frequently left there without prosecution—

Bond to pros-  
 ecute in crim-  
 inal case must  
 be given.

29. SEC. II. *Be it therefore enacted*, That from and after the passing of this act, it shall not be lawful for any magistrate to commit a criminal to jail for any offence against the State, without first compelling the prosecutor to give bond and security, to prosecute according to law.

### *Bench Warrant.*

STATE OF GEORGIA, } To all and singular, the Sheriffs, Constables and  
*Houston County.* } other lawful officers of this State.

Whereas, at the *April* term of the Superior Court of said County, eighteen hundred and *fifty-nine*, the Grand Jurors did find a *Bill of In-*

*dictment* against *John Doe*, of said County, for the offence of *Assault and Battery*. These are, therefore, to command you, and each of you, in the name of the State, to apprehend the said *John Doe*, and bring him before me, or some Justice of the Peace, to be dealt with as the law directs. Herein fail not.

Witness my hand and seal, this May 1, 1859.

HENRY G. LAMAR, J. S. C. M. C. [L. S.]

G. M. Montfort, Sol. Gen.

NOTE.—When the accused is arrested, the Justice of the Peace before whom he is brought, if the case be bailable, must bind him, in sufficient Bond and Security, for his appearance at the ensuing term of the Superior Court for the County in which the offence was committed, and from which the Bench Warrant issued. If the offence be not bailable, or the accused fails to give Bond and Security, he must be committed to Jail. The papers should be returned to the Court having cognizance of the offence. In cases of *Felony*, two Justices must sit on the case.

*Bond for the appearance of a Witness in an Indictment, during the term.*

STATE OF GEORGIA, } In person appeared in open Court, *John Doe*,  
Houston County. } of said County, who acknowledges himself to be held and bound to his Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of *two hundred* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, there is an *Indictment* pending in the Superior Court of said County, now in session, against one *John Bellows*, for the offence of *Assault and Battery*. In which *Indictment* said *John Doe* is a material witness on the part of the State. Now, should said *John Doe* well and truly, personally, be and appear in said Court from day to day, during the term of said Court, and from term to term, and testify on the trial of said *Indictment*, and not depart from said Court but by leave of said Court, then this obligation to be void; otherwise, of force. This April 25, 1859.

In open Court—

JOHN DOE, [L. S.]

William H. Miller, Clerk.

*Bond for the appearance of an Indicted person, during the Term.*

STATE OF GEORGIA, } In person appeared in open Court, *John Doe*  
Houston County. } as principal, and *Richard Roe* as security, both of said County, who acknowledge themselves held and bound to his Excellency *Joseph E. Brown*, Governor of said State for the time being, and his successors in office, in the sum of *five hundred* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, there is an *Indictment* pending in the Superior Court of said County, now in session, against said *John Doe*, for the offence of *Assault and Battery*. Now, should said *John Doe* well and truly, personally, be and appear, (and abide his trial for said offence of *Assault and Battery*,) from day to day, during the term of said Court, and from term to term, and not



depart from said Court but by leave of said Court, then this obligation to be void; otherwise of force. This *April 25, 1859.*

In open Court—  
*William H. Miller, Clerk.*

JOHN DOE, *prin'l.* [L. S.]  
RICHARD ROE, *sec'ty.* [L. S.]

### *Warrant for Vagrancy.*

STATE OF GEORGIA, } Personally appeared before the undersigned,  
*Houston County.* } one of the Justices of the Peace in and for said  
County, *John Doe*, who being sworn saith, that *Richard Roe*, of said  
County, is a person who has no apparent means of subsistence, and  
neglects applying himself to any honest calling, but is now seen wan-  
dering about in said County, (though able to work and support himself  
in a reputable way,) endeavoring to support himself by *Gaming* and  
other unlawful means, leading an idle, immoral and profligate course  
of life.

Sworn to and subscribed,  
before me, this *May 1, 1859.*  
*James Mack, J. P.*

JOHN DOE.

STATE OF GEORGIA, } To all lawful officers of said County, to execute  
*Houston County.* } and return.

Forasmuch as *John Doe*, of said County, hath made oath before  
the undersigned, one of the Justices of the Peace in and for said  
County, that *Richard Roe*, of said County, is a person who has no  
apparent means of subsistence, and neglects applying himself to any  
honest calling, but is now seen wandering about in said County,  
(though able to work and support himself in a reputable way,) en-  
deavoring to support himself by *Gaming* and other unlawful means,  
leading an idle, immoral and profligate course of life. These are,  
therefore, to command you to bring the said *Richard Roe* before me,  
or some other Justice of the Peace for said County, to be examined  
touching the premises, and to be otherwise dealt with as the law  
directs.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

### *Bond for Good Behavior and Future Industry.*

STATE OF GEORGIA, } In open Court came *John Doe* as principal, and  
*Houston County.* } *Richard Roe* as security, both of said County, and  
acknowledge themselves held and bound to his Excellency *Joseph E.*  
*Brown*, Governor of said State for the time being, and his successors  
in office, in the sum of *four hundred* dollars; subject to the following  
condition—

The condition of the above obligation is as follows—whereas, a Bill  
of Indictment for Vagrancy, has been found, in the Superior Court of  
said County, against *Richard Roe*, of said County; upon which Bill of  
Indictment said *Richard Roe* has not yet been tried. Now, should  
said *Richard Roe* be of Good Behavior, and industrious, for one year,

next ensuing, then this obligation to be void; otherwise, of force.  
This *April 25*, 1859.

In open Court—  
*William H. Miller, Clerk.*

JOHN DOE, *prin'l.* [L. S.]  
RICHARD ROE, *sec'ty.* [L. S.]

### *Warrant for Rape.*

STATE OF GEORGIA, } Personally appeared before the undersigned,  
*Houston County.* } one of the Justices of the Peace in and for said  
County, *Betsey Claybank, spinster*, who being duly sworn, saith that  
*John Doe*, in said County, on the *first* day of *May*, eighteen hundred and  
*fifty-nine*, on and upon the said *Betsey Claybank*, violently and felon-  
iously did make an assault, and her the said *Betsey Claybank*, then and  
there, feloniously ravished and carnally knew; against the will of her,  
the said *Betsey Claybank*.

Sworn to and subscribed,  
before me, this *May 2*, 1859. }  
*James Mack, J. P.*

*her*  
BETSEY X CLAYBANK.  
*mark.*

STATE OF GEORGIA, } To *John Jacobs*, one of the Constables of said  
*Houston County.* } County, and to all lawful officers.

Whereas, *Betsey Claybank, spinster*, hath complained on oath, before  
the undersigned, one of the Justices of the Peace in and for said Coun-  
ty, that *John Doe*, in said County, on the *first* day of *May*, eighteen hun-  
dred and *fifty-nine*, on and upon the said *Betsey Claybank*, violently and  
feloniously did make an assault, and her the said *Betsey Claybank*,  
(against the will of her, the said *Betsey Claybank*,) then and there, felo-  
niously ravished and carnally knew. These are, therefore, to command  
you to make diligent search for the said *John Doe*, and he being found,  
that you bring him before me, or some other Justice of the Peace for  
said County, to be examined touching the premises, and to be other-  
wise dealt with according to law.

*Witness my hand and seal, this May 2*, 1859.

JAMES MACK, J. P. [L. S.]

### *Recognizance with Sureties.*

STATE OF GEORGIA, } Be it remembered, that on the *first* day of *May*,  
*Houston County.* } eighteen hundred and *fifty-nine*, *John Doe* as prin-  
cipal, and *Richard Roe* as security, both of said County, personally came  
before the undersigned, one of the Justices of the Peace in and for said  
County, and acknowledge themselves to owe to his Excellency *Joseph*  
*E. Brown*, Governor of said State, for the time being, and his succes-  
sors in office, the sum of *five hundred* dollars, to be made and levied of  
their goods and chattels, lands and tenements, to the use of said State,  
if he the said *John Doe*, shall fail in the condition underwritten.

The condition of the above obligation is as follows—whereas, said  
*John Doe* has been arrested upon a warrant, charging him with the  
crime of *Adultery*; which warrant has been returned before *James Mack*,  
*Esq.*, a Justice of the Peace, by whom said *John Doe* has been required  
to give security for his appearance before the Superior Court of said



County: now, should the said *John Doe*, well and truly be and appear at the next Superior Court to be held in said County, and from day to day, and from term to term of said Court, to answer said charge, and not depart from said Court without leave of said Court, then this obligation to be void; otherwise, of force.

Acknowledged before me—

*James Mack, J. P.*

JOHN DOE, *prin'l.* [L. S.]

RICHARD ROE, *sec'ty.* [L. S.]

### *Backing Warrant.*

STATE OF GEORGIA, } *To any lawful officer of said County to execute*  
*Bibb County.* } *and return.*

*Witness my hand and seal, this May 1, 1859.*

ROBERT THOMAS, J. P. [L. S.]

NOTE.—Where a Warrant is issued for a party who is moving about from one county to another, any Justice of the Peace of the county in which the accused may be found, has the right of Backing the Warrant; and when the party is arrested, (if the offence be bailable,) he should be conveyed to a Justice of the County where he is arrested. If the offence be not bailable, or if he fails or refuses to give bail, then he is to be carried before a Justice of the County, where the offence was committed.

### *Examination of a Person accused of any Criminal Matter, to which he must not be sworn, nor coerced.*

STATE OF GEORGIA, } The examination of *John Doe*, of said County,  
*Houston County.* } taken before the undersigned, one of the Justices of the Peace in and for said County, (or us, if the charge requires the attention of two Justices of the Peace,) the *first* day of *May*, eighteen hundred and *fifty-nine*, in said County. The said *John Doe* being charged before the undersigned (or us) by *Richard Roe*, of said County, with the crime of *Assault and Battery*. The said *John Doe*, upon his examination now taken, says, [*here insert the answers of the accused as he makes them.*]

Before me (or us)—*James Mack, J. P.*

JOHN DOE.

NOTE.—The Justice or Justices, before whom the examination takes place, should caution the accused not to say any thing that would prove his guilt, or implicate him in any way. The answers must be voluntary. The accused may decline to answer if he prefers that course. This proceeding is intended to form an issue between the State and the party accused, not to ascertain his guilt.

### *Information of a Witness.*

STATE OF GEORGIA, } The evidence of *Richard Roe*, of said County,  
*Houston County.* } taken upon oath before the undersigned, one of the Justices of the Peace in and for said County, the *first* day of *May*, eighteen hundred and *fifty-nine*, in said County. Said *Richard Roe* having been sworn to speak the truth, the whole truth and nothing but the truth, of and concerning the accusation made before the undersigned, against *John Doe*, who stands charged with the crime of *Assault and Battery*, saith, that [*here insert the answers of the witness.*]

Before me—*James Mack, J. P.*

RICHARD ROE.

*Certificate of the Justice.*

STATE OF GEORGIA, } *To the Superior Court of said County.*  
 Houston County. } The undersigned, one of the Justices of the  
 Peace in and for said County, hereby certifies, that the foregoing con-  
 tains the proceedings in the case of the State against *John Doe*, who  
 was charged before the undersigned, with the crime of *Assault and*  
*Battery.*

*Witness my hand and seal, this May 2, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—It is here mentioned, once for all, that the Warrant, the Examination of the Accused, the Information of the Witnesses, etc., certified by the Justice, must all be returned to the ensuing term of the Superior Court. Each of these requirements is essential.

*Rules of Law to be Carefully Observed.*

NOTE.—For the information of Justices of the Peace, it may be proper to point out, *first*, for what crimes they *cannot* bail, but *must* commit the Prisoner to Jail, if there be sufficient cause for commitment. *Secondly*, what crimes *are* bailable or not, according to their discretion. *Thirdly*, for what crimes they *must* let to bail, if sufficient surety is offered. *Fourthly*, in what cases *two* Justices, at the least, must sit together and concur in opinion, in order to let to bail. And, *fifthly*, when one Justice alone has power to bail.

“*And, first.* No Justice of the Peace can bail, 1, upon an accusation of Treason; nor 2, of Murder; nor 3, of Manslaughter, if the prisoner be clearly the slayer (and not barely suspected to be so)—or if an indictment be found against him; nor 4, such as being committed for Felony, have broken prison; nor 5, Approvors, and persons by them accused; nor 6, persons taken with the Manor, or in the fact of Felony; nor 7, persons charged with Arson; nor 8, such as are charged with Counterfeiting; nor 9, Thieves, openly defamed and known. All these are clearly not admissible to bail by Justices of the Peace.—4 *Black. Com.* 298—*Com. Dig.* 469.

“*Secondly.*—Justices of the Peace may or may not, at their discretion, let to bail in the following cases, to wit: Burglary, Larceny, Forgery, Perjury, Rape, Polygamy, Bestiality, Robbery, persons charged with other felonies or manifest and enormous offences, not being of good fame. And accessories to felony, that labor under the same want of reputation.—4 *Black. Com.* 299.

“*Thirdly.*—The last class are such as *must* be bailed if sufficient surety is offered, to wit: Persons of good fame charged with a bare suspicion of Manslaughter, or other inferior Homicide. Such persons being charged with Petit Larceny, or any felony not before specified; or with being accessory to any felony. And all other persons charged with minor offences, as Assault, Battery, False Imprisonment, Adultery, Fornication, Riot, Rescue, Mayhem, Affrays, Fraudulent-Mischief, Cheating, Swindling and, generally, Misdemeanors of all kinds.

“*Fourthly.*—In cases of Manslaughter or Felony, bailable by law, *two Justices at the least*, must sit together and concur in opinion; for one Justice alone has no power to bail.—3 *Hen. VII.*, ch. 3. And some of the offences comprehended in the term Felony here used, are Burglary, Larceny, Forgery, Perjury, Rape, Polygamy, Bestiality, Robbery, Manslaughter, &c., &c. And in all such cases the Justices are bound to take the examination of the prisoner and information of those that bring him, of the facts and circumstances of the felony, and put the same in writing, before any bailment or commitment made. And the said examinations and bail-bond, they must certify and send up to the next Superior Court for the County in which the crime was committed.—1 *Phil. & Mary*, ch. 13.—2 & 3 *Phil. & Mary*, ch. 10. The Justices have also power under these statutes, to bind over all witnesses by recognizance, who know anything material to prove the felony, to appear at the next Superior Court, to give evidence on the trial. And such recognizances they must also certify and return to the Court, with the other proceedings. If the witnesses refuse to give bail or be bound over, the Justices may commit them to jail until they comply.—*Ibidem*.

“*Fifthly.*—In all minor offences below the degree of Felony, *one Justice of the Peace* alone, may let to bail; such for instance as Assault, Battery, Adultery, Fornication, Riot, Rescue, Affrays, Swindling, Cheating, False-Imprisonment, Petit-Larceny and Misdemeanors generally.

“And in all cases brought before Justices of the Peace, they have power to inquire



into the facts and circumstances of the transaction ; and if they are satisfied from the evidence, either that no crime has been committed, or that the prisoner is clearly innocent of the charge, or that there is not sufficient cause of commitment, they may discharge him from confinement.—4 *Black. Com.* 296—2 *John. Rep.* 203—1 *Bac. Abr.* 610. And in such case, it is in their discretion to make the prisoner or the prosecutor, pay the costs.—*Act of 1811.*

"It is not to be understood, however, that the Justice or Justices, are to exercise *the province or functions of a jury*, by weighing the evidence and deciding on the guilt or innocence of the prisoner : for if the Justices have any doubt, or think from the evidence, that there is probability of guilt, then he ought to be bailed or committed, according to the offence.

"Justices of the Peace have power also, to bail persons who by law are bailable, notwithstanding that they have been committed, and are actually in jail.—1 *Com. Dig.* 472." *Schley's Dig. of Eng. Statutes.*

AN ACT to authorize the Justices of the Inferior Courts of this State, to exercise Criminal Jurisdiction.—*Approved March 5, 1856.*

Justice of the  
Inferior Court  
may exercise  
Crimin'l Juris-  
diction.

30. SEC. I. That from and after the passage of this act any justice of the inferior court of this State, may exercise the same criminal jurisdiction as is now exercised by a justice of the peace ; and the same powers, as to criminal matters, vested in a justice of the peace, shall be and is hereby vested in a justice of the inferior court.

SEC. II. [Repeals conflicting laws.]

## JUSTICES' COURT.

AN ACT to alter and amend the several Judiciary Acts now in force in this State, so far as relates to Justices' Courts.—*Approved Dec. 14, 1811.*

Jurisdiction  
of Justices'  
Courts.

32. SEC. I. *Be it enacted*, That from and after the passing of this act, the justices of the peace in the respective company districts, or any one or more of them, shall have authority and jurisdiction, to hear and determine all suits on any liquidated demand or account for any sums of money, not exceeding thirty [*fifty—see 81*] dollars, by summons or warrant : *Provided*, that no justice of the inferior court, clerk, sheriff or [*practising attorney—repealed, see Attorney-at-Law,*] being a justice of the peace, shall try any

Judgment.

warrant, or give judgment thereupon, in any civil case whatsoever. And the said justices are hereby authorized and empowered to give judgment and award execution thereon : *Provided nevertheless*, that either party being dissatisfied, shall be allowed an appeal, on payment of costs and giving security for the eventual condemnation money, within three days after judgment ; [*unable to pay costs may appeal by filing affidavit—see Judiciary*] or the party cast may stay the levy of execution for forty [*sixty—see 82 and 83,*] days, on payment of cost and giving security, within four days after judgment. But no stay of execution shall be allowed after an appeal trial, for a longer time than twenty days, [*see 82 and 83 ;*] in which case the security on the appeal, together with the security for the stay of execution, shall be liable

Appeal al-  
low'd and how  
entered.

Stay of  
Execution.

Debts reduced  
may be  
recovered.

Payment must  
be endorsed.

for the debt and cost. And it shall be lawful for any person or persons, who has or have in his, her or their hands, any bond, note or account, which was given for any sum exceeding thirty dollars, and the amount of which has been reduced by any payment or payments, or off-sets, to the sum of thirty [*fifty*] dollars or under, and which payment or payments are endorsed on the back of such bond, note or account. Or where any bond, note, account or other agreement, (gaming debts excepted,) which in its original exceeded the sum of thirty [*fifty*] dollars, but has been reduced by bond or bonds, note or



notes, although of equal date and payable at the same time, to a sum or sums under or of thirty [*fifty*] dollars each; that then and in every such case, it shall and may be lawful for any person or persons, who has or have, in his, her or their hands, any such note or notes, bond, or bonds, or accounts, as aforesaid, to bring suit thereon in the justices' court in the district where the debtor or debtors may reside. And the justice or justices are hereby authorized to give judgment for whatever sum in his judgment appears to be due.—[*See 81.*]

33. SEC. II. All such appeals shall be tried before any one or more justice or justices in the company district in which the cause originated, by five jurors, to be drawn, impannelled and sworn, as herein-after directed, and in no other manner whatsoever, whose verdict shall be final and conclusive between the parties, (except removed by *certiorari*;) *Provided always*, that no justice or justices of the peace shall hold any justices' court, or pass any judgment, in any civil case, or any other, on more than [one day in each month, *but see 84,*] which day they may appoint in their respective districts; nor at any other place than that specially mentioned in the warrant or summons; which place shall be as near central as convenience will admit; which warrant or summons shall be served by any constable of the district in which the defendant may reside, duly appointed and sworn to the faithful execution of his office; either by giving a copy to the defendant in person, or by leaving a copy thereof at his, her or their usual and notorious place of abode; at least ten [*nine, see 68,*] days before the day of trial. And it shall be the duty of the constable serving the summons or warrant, to make an entry of service thereon in writing, and sign such return.—[*Pleadings may be amended, see 85.*]

Appeals tried  
by Jury.

Proceedings  
when and  
where to be  
had.

Warrant or  
Summons by  
whom and  
how served.

34. SEC. III. Where a suit shall be instituted in any justices' court, on any bond, note or other written obligation, subscribed by several persons living in different counties or districts, the plaintiff shall have his option to institute his suit in either of the counties or districts, and a copy of the original process being served on either, or each, of said obligors or promissors, by an officer duly authorized, who shall make a return thereof, under his hand, to the person applying for such service, or the court from which the original issued. And on such return being made, the justice or justices shall be authorized to enter up judgment against the several obligors or promissors, or either of them, who shall be summoned as aforesaid.

How Joint-  
Obligors and  
Promissors,  
living in dif-  
ferent Dis-  
tricts or Coun-  
ties, may be  
sued.

35. SEC. V. In all cases brought before any justices' court, the best evidence the nature of the case will admit of, shall be required. Nor shall any person, plaintiff or defendant, be permitted to prove his or her account, by his own oath, without first making oath in writing, that he or she hath no other evidence whereby to establish the same, that is in his or her power to procure. And in all cases of mutual debts and set-off, the said justice or justices may enter up judgment for the defendant, where it shall satisfactorily appear that there is a balance due him or her; and on good cause being shown on oath, by either party, the said justices may postpone the trial three terms, and no longer. And where an execution is levied on property claimed by any person not a party to said execution, it shall be the duty of the constable to postpone the sale of such property, and make return thereof to the first court in said district: *Provided*, the person putting in such claim shall [first make oath in writing, that said property "is not liable to said execution," *see 59,*] and shall also give bond and security in double the amount of such execution, which bond the constable is hereby authorized to take, payable to the plaintiff in execution; with condition to pay all costs and damages which he or she may sustain, in case it should appear such claim was frivolous and intended for delay only; recoverable in any court having cognizance thereof. And it shall be the duty of the said court, to cause the right of prop-

What evi-  
dence re-  
quired.  
Oath of party  
when allowed.

Sets-off.

Continuance  
when allowed.

Claims.

Claimant  
must make  
Affidavit and  
give Bond.



Trial of Claim may be continued. Bail. erty to be tried, at the next term, by five jurors, to be drawn and impannelled in like manner as appeals. And on good cause being shown on oath, the court may postpone the trial for one term, and no longer.—[*But see 77.*]

36. SEC. VI. The said justices shall have power and authority to hold to bail for debts within their jurisdiction, under such restrictions and regulations as prevail in the superior and inferior courts.—[*See title Bail.*]

Witness must be subpœnæd. Defaulting Witness fined, etc. 37. SEC. VII. Any justice of the peace may issue summonses for witnesses resident within the county, in any case to be tried before him; which shall be served five days before the day of trial. And such witnesses shall be subject to a fine not exceeding \$10, for default, at the discretion of said justice; and, moreover, be liable to pay the party grieved, by action in any court having jurisdiction of the same, for any damages he may sustain by such default; who may issue execution for the amount of said fine: *Provided*, sufficient excuse shall not be made at or before the next court-day: *Provided also*, that all witnesses duly summoned, and attending said court, who may reside out of the district where such court may be held, shall receive seventy-five cents per day for their attendance: *And provided also*, that there shall not be taxed in the bill of costs, the expense of more than two witnesses to prove the same fact. And it shall be the duty of all persons summoned as aforesaid, to attend from time to time, until the cause shall be determined, or they be otherwise discharged by the court. And all fines shall be paid into the hands of the inferior court, for the use of the county. And when any witness resides out of the county, whose evidence may be material for either party in any cause pending in said justices' court, it shall and may be lawful for the party wishing to obtain such testimony, to obtain a commission from the justice issuing the summons, first giving the adverse party, his agent or attorney, five days' notice, accompanied with a copy of the interrogatories intended to be exhibited; which commission shall be directed to any two or more freeholders, one of whom shall be a justice of the peace, to examine on oath, all and every such witness or witnesses. And such examination, when so taken, shall be sealed up by the commissioners and directed to the magistrate by whom it was issued. And on returning the same shall swear, that it has undergone no alteration from the time of his receiving it of the commissioners—[*see 79.*] And the commission and interrogatories so issued, executed and returned, shall be read on the trial, at the instance of either party.

Witness residing out of the District to be paid. How many witnesses paid. Witness must attend. Fines how disposed of. Interrogatories how taken out, executed and returned.

Party must swear on returning the Commission. Method of draw'g Juries. 38. SEC. VIII. The method of drawing jurors for the trial of appeals and all other cases in justices' courts, in each district, shall be as follows: The justice or justices residing in each captain's district, [in conjunction with commanding officers of said district—*see 57 and 58,*] shall once in every two years, procure or make out a list of all persons liable to serve as jurors in the superior courts, who may be residents in their respective districts, and shall write the name of every person so liable on a separate piece of paper, which shall be deposited in a box, in an apartment marked No. 1, and shall draw therefrom, not less than five nor more than seven of the names, so before deposited, from time to time, to try the causes so depending before them; which names so drawn shall be entered in a book by the justice presiding at the drawing thereof; and shall be deposited in an apartment of said box, marked No. 2. And after all the names are drawn from No. 1, they shall commence drawing from No. 2, and so on alternately: *Provided*, that no justice shall presume to draw any jury, but on a court-day, and in public, and by a person not interested in any suit to be tried by said jury. And any person so drawn and summoned by a constable, five days before court, neglecting to appear, shall be fined by

Number of Jurors to be drawn. Defaulting Juror may be fined.

Defaulting Juror may be fined.



the justice or justices, in a sum not exceeding three dollars, unless such juror shall show sufficient cause of excuse, on oath, at the next term. And in all cases of deficiency of jurors, the constable, by the direction of the justices, shall fill and complete such jury from the by-standers: *Provided*, there shall not be less than three of the original pannel on such jury; and they shall, for every verdict by them given in, be entitled to twenty-five cents, to be paid by the party in whose favor such verdict may be given, and to be taxed in the bill of costs.

Jury how  
made up.  
Fee of Jury;  
by whom paid.

39. SEC. IX. The oath to be administered to the jury, on the trial of appeals; also, for the trial of the right of property, and on a traverse trial in justices' courts, shall be as follows: "You shall well and truly try the cause now pending between A B, plaintiff, and C D, defendant, and a true verdict give, according to equity, and the opinion you entertain of the evidence produced to you; to the best of your skill and knowledge, without favor or affection to either party; provided the case is not withdrawn—so help you God."

Oath of Jury.

40. SEC. X. [See 26.]

Bond, note,  
etc., must be  
deni'd on oath  
in writing.

41. SEC. XI. No person shall be permitted, in any trial in said justices' court, to deny his bond, note, or bill, for money or other thing, unless such person shall first make oath, in writing, to the truth of such denial.

42. SEC. XII. In case any person or persons, after being summoned to answer any complaint for debt, before any justice of the peace, shall before the sitting of such court, remove out of the district, such justice may nevertheless, give judgment against him, her or them. And if any person shall, after judgment of such court, remove out of the district or county, before satisfaction made, such justice may, in either case, issue execution against such person or persons; which execution being backed by any justice of the county, where such person or persons, or his, her or their property may be found, may be levied by any lawful constable of said county.

Defendant re-  
moving before  
or after Judg-  
ment, Court  
may proceed.

Backing Exe-  
cution.

43. SEC. XIII. If any person or persons shall live or reside within any county or district, for the space of ten days, the same shall constitute a sufficient residence so as to authorize the justices of said county or district, to proceed against him, her or them, before any company district court, as herein-before pointed out, for all debts within their jurisdiction.

Ten days' re-  
sidence gives  
Jurisdiction.  
No Justice, an  
adjoining Jus-  
tice to act.

44. SEC. XIV. In case there be no justice of the peace resident in any captain's district, then it shall and may be lawful for a justice, in any adjoining district, to proceed in like manner, as if the defendant was an inhabitant of his district. And all cases in which a justice of the peace may be a party, shall be tried in the nearest justices' court to the residence of the defendant, in said county, and not within the district in which he may reside.

Justice a par-  
ty, case to be  
tried in near-  
est Court.

45. SEC. XV. The justices of the peace of the respective counties, shall be, and they are hereby declared to be liable to prosecution and trial, by indictment, for mal-practice in office. And it shall be the duty of the attorney or solicitor-general, on complaint made to them, or either of them, on oath, by any person or persons, to frame and prefer a bill of indictment to the grand jury of the county, in which the justice or justices complained of may reside, containing the merits of the complaint, specially set forth. Which indictment, if found by the grand jury, after hearing the evidence and the parties, shall be tried by a petit jury. And if convicted on such indictment, the judgment of the court may extend to fine and removal from office, or either, at discretion [of the court].—[And see Cobb's Penal Code, 119.]

Justice indict-  
able for mal-  
practice.  
Sol. gen. must  
prosecute.

Indictment  
how tried.  
Punishment.

46. SEC. XVI. When it shall appear by the return of a constable, on any execution or executions, that the same has been paid by a security or securi-

Security pay-  
ing off *fi. fa.*  
to have con-  
trol of it.



ties, it shall be the duty of the justice or justices, to make an entry thereof in their docket book. And such security or securities shall have the use and control of said execution or executions, for the purpose of remunerating him, her or themselves, out of their principal, although such execution may have been levied and property sold to satisfy the same.—[See 62.]

Constable must advertise his sale; how long and where. Sales when and where made. 47. SEC. XVII. It shall be the duty of constables to advertise all intended sales, at two or more of the most public places in their proper district, [and at one or more of the most public places in the county; see 71] at least fifteen days before any sale; and shall give a full and clear description of the property to be sold. And all constables' sales shall be at the place of holding justices' courts in the several company districts, and on a court-day, and that between the hours of ten and three [four] o'clock.

Negroes and Land not to be levied on, but under certain circumstances. 48. SEC. XVIII. No constable shall be authorized to levy on any negro or negroes, or real estate, unless there is no other personal estate to be found, sufficient to satisfy the debt, [but see 70,] and then, and in that case, they are hereby authorized to levy on the same wherever to be found, and deliver over the execution or executions to the sheriff of the county, with a return of the property levied on, who shall proceed to sell the same, with such formalities as are prescribed for the sale of real estates.

Judgment of equal dignity with those of Sup. and Inf. Courts. What property bound. 49. SEC. XIX. All judgments which may be obtained in, and executions issued from any justices' court, after the passing of this act, shall bear equal dignity with judgments obtained in, and executions issued from the superior or inferior courts; and shall bind all the property of the defendant, from the date of said judgment; and also, all the property of his, her or their securities, from the time of their entering themselves as such, until the same shall be satisfied.

Compensation may be allowed Constable, for certain services. 50. SEC. XX. A reasonable compensation shall be allowed to constables, for carrying property levied on, to the place of sale, when there appears an absolute necessity for so doing, to be judged of by the justice or justices resident in said district.

Constables must levy all *fi. fas.* put into their hands. Neglect of duty how punished. 51. SEC. XXI. It shall be the duty of the constables of the several districts, to levy all executions put into their hands, agreeably to the tenor thereof, and to make due returns of the same, together with all summonses or warrants, to the court to which they may be made returnable. And if any constable shall fail to execute and make returns, or pay to or account with any person for whom he may have received money on any execution, within ten days after the reception thereof, the person so injured, as aforesaid, may upon application to any justice within the district where said constable may reside, (and in case there should be no justice in said district, then an application to a justice in any adjacent district,) whose duty it shall be to grant a warrant to such applicant against such constable. And such justice shall, upon proof thereof, award judgment and execution for the same and all cost, against such constable; and also, fine him for such abuse, in a sum not exceeding ten per cent. on the amount so withheld. And in case of neglect or refusal to serve and return any warrant or summons, as aforesaid, may fine the constable so offending, in a sum not exceeding the amount of the debt due by the defendant. And all constables shall, moreover, be subject to be prosecuted and tried for mal-practice in office, in like manner as herein pointed out for justices of the peace; and liable to like pains and penalties.

52. SEC. XXII. [Superseded by *Fee Bill*.]

Parties may settle or withdraw cases. *Fi. fa.* returned "no prop- 53. SEC. XXIII. In future any person or persons who may institute any suit or suits, in any justices' court, shall be at liberty to settle or withdraw the same, at any time, on payment of the cost which may have already accrued. And in all cases where execution or executions may issue, and being returned with an entry of service thereon, "no property to be found whereon to levy,"



the plaintiff is hereby liable and bound for the cost, and that on refusal to pay the same, execution may issue for the said amount, against the said plaintiff. erty," Plaintiff liable for costs.

54. SEC. XXV. It shall be lawful for any constable of the county, to serve any warrant or summons wherein any justice of the peace or constable may be a party, and to summon any witnesses, and to serve any bail-warrant or attachment, and to make due return thereof to the court to which the same may be made returnable. And where it may so happen that there is no constable in the district, it shall and may be lawful for any constable in the county, to act in the said district, in all respects as if such constable had been appointed for said district. Who may act where Justice or Constable is a party. No Constable in district, who may act.

SEC. XXVI. [Appointment of constables—see 10.]

55. SEC. XXVII. The justices of the peace of the several districts, shall have power during the sitting of their respective courts, to fine or imprison any person or persons for contempt of said courts, to be adjudged by the said justice or justices, in any sum not exceeding \$2, or imprisonment for a term not exceeding two days, for each offence; which said fine, when collected, shall be paid over into the hands of the inferior court for county purposes. Justices may fine or imprison, for contempt of Court.

SEC. XXVIII. [Repeals all conflicting laws.]

AN ACT to repeal so much of the eighth section of an act "to alter and amend the several Judiciary acts, now in force in this State, so far as relates to Justices' Courts," approved December 14th, 1811, that requires the Commanding Officers of each District, to assist in drawing juries in Justices' Courts.—*Approved Dec. 21, 1857.*

56. SEC. I. That so much of the above-recited act as requires the commanding officers in each captain's district, to act in conjunction with the justices of the peace, in drawing juries, be and the same is hereby repealed. Part of the Act of 1811 repealed.

57. SEC. II. That the justices of the peace, in each district, shall have full power to meet and revise the jury-box, and draw juries for their courts, without the presence of the commanding officer of said district.—[*See next Act.*] Justices to draw Juries, etc.

SEC. III. [Repeals conflicting laws.]

AN ACT to alter and amend the eighth section of an act passed the 14th December, 1811, so far as relates to drawing Jurors in Justices' Courts, by the Justice or Justices residing in each Captain's District, in conjunction with Commanding Officers of said District.—*Approved Dec. 22, 1857.*

59. SEC. I. That from and after the passage of this act, the justice or justices residing in each militia district, in conjunction with two freeholders of said district, shall draw jurors in justices' courts of this State, as now provided by law. How Juries to be drawn in Justices' Courts.

SEC. III. [Repeals conflicting laws.]

#### ACT OF NOVEMBER 23, 1814.

60. So much of the Vth section of the above-recited [*the Act of 1811*] act, as requires persons claiming property under execution, not a party to such execution, to make oath that such property "is not liable to such execution," be and the same is hereby repealed. And in all cases of executions from any justices' court in this State, levied on property claimed by any person not a party to such execution, such person shall make oath that such property levied on, is his or their right and property, or his or their property, as attorney, agent, guardian, executor or administrator, as the case may be—to the best of his, her or their knowledge and belief; and shall, moreover, give security in terms of the said Vth section. Part of 5th sec. of act of 1811, repealed. Oath of person claiming property.



*Warrant or Summons.*

STATE OF GEORGIA, } To any lawful officer to execute and return.  
     Houston County. } Debt in Justices' Court, 619th District Georgia Militia.

*John Doe vs. Richard Roe.*—The Defendant of said District, is hereby required, personally, or by attorney, to be and appear at the Justices' Court, to be held at *Perry*, in, and for the 619th District, G. M. on the *first Saturday in June next*, by ten o'clock in the forenoon, to answer the complaint of the Plaintiff on an *Account*, a copy of which is hereunto annexed. In default hereof the Court will proceed as to justice shall appertain.

Witness my hand and official signature, this *May 1*, 1859.

JAMES MACK, J. P.

NOTE.—A copy of the paper sued on should be annexed to the summons.

		<i>Copy of the Account filed.</i>								<i>Dr.</i>
		<i>Richard Roe to John Doe,</i>								
1858.										
June 1,	4 lbs. Tobacco	.	.	.	.	.	.	.	.	\$1 00
	10 do. Sugar	.	.	.	.	.	.	.	.	1 00
	20 do. Coffee	.	.	.	.	.	.	.	.	3 00
										<hr/>
										\$5 00

NOTE.—The Justice issuing the Summons should be careful to state in the Summons, Judgment and *fi. fa.* the character of the Defendant as Security, Endorser, etc., in all actions upon Notes, Bonds or other instruments in writing; where either of the parties appear as such upon the contract.

Cases in which Justices of the Peace are parties "must be tried in the nearest Justices' Court to the residence of the Defendant." In such cases the Summons should commence thus: "*John Doe*, Justice of the Peace, in and for the 618th District, G. M., in said County," etc. And where there are two or more Defendants residing in different Districts or Counties, add to their names the respective Districts or Counties of their residence, thus: "*Richard Roe*, of said District and County; *Ephraim Boyd*, of the 620th district, G. M. in the County aforesaid, and *Nehemiah Strut*, of the County of *Pulaski* and State aforesaid; are" etc.

*Return of the Constable.*

Served a copy of this Summons on the defendant, *personally*. This *May 2*, 1859.

JOHN JACOBS, Constable.

*Subpœna for Witness.*

STATE OF GEORGIA, } To *John Smith*—You are hereby required, that,  
     Houston County. } laying all business aside, you be and appear at the Justices' Court, to be held in and for the 619th District, G. M., on the *first Saturday in June next*, by ten o'clock in the forenoon, to be sworn as a Witness for the Plaintiff, in a case pending in said Court, in which *John Doe* is Plaintiff, and *Richard Roe* is Defendant. Herein fail not, under the penalty of the law. This *May 1*, 1859.

JAMES MACK, J. P.

*Plea of the Defendant.*

And now comes the Defendant, *in person*, and for Answer to the Plaintiff's action, says: That he is not indebted to the Plaintiff, by

*Account*, or in any other manner, and of this he puts himself on the Court and country. This *June* 10, 1859.

RICHARD ROE.

NOTE.—If the Defendant has any special matter of Defence, he must set it out in his Plea, plainly, fully and distinctly.

*Oath of the Plaintiff to Prove his Account.*

STATE OF GEORGIA, } In open Court comes *John Doe*, who, being  
Houston County. } duly sworn, says, that he has no other evidence,  
(which is in his power to procure,) whereby to establish his Account  
against *Richard Roe*, now sued upon; and therefore, he is compelled  
to prove the same by his own oath. This *July* 10, 1859.

Sworn to and subscribed,  
in open Court, before me. }

*James Mack, J. P.*

JOHN DOE.

NOTE.—After the above Affidavit has been made by the Plaintiff, (which must be in writing,) he is, by the Court, to be sworn as a witness and examined as to the correctness of the Account; after which the Defendant has the right to cross-examine him, for he is a witness in the case.

AN ACT to allow parties in Justices' Courts to prove open Accounts when the same does not exceed fifty dollars, &c.—*Approved Dec. 22, 1857.*

*Whereas*, the Legislature, at its last session, passed an act giving to Justices of the Peace jurisdiction over all sums not exceeding fifty dollars, principal and interest. *And whereas*, the act of December 27th, 1842, limits the amount on open Accounts, to be proven by parties in Justices' Courts, to thirty dollars, thereby causing litigation and consequent delays, resulting from the seemingly contradictory statutes; for remedy whereof—

61. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for parties, plaintiff or defendant, in any case in the Justices' Courts of this State, to prove open accounts in the same manner as heretofore prescribed by law, provided the amount does not exceed the sum of fifty dollars.

Accounts of  
\$50 collect-  
able.

SEC. VII. [Repeals conflicting laws.]

*Judgment of the Court.*

Whereupon, it is considered by the Court here, that the Plaintiff do recover against the Defendant, the sum of *five* dollars, for his principal debt; the sum of *one* dollar and *twenty-five* cents, for his costs in this behalf, laid out and expended. And the Defendant in mercy, etc. Judgment signed, this *July* 10, 1859.

JAMES MACK, J. P.

*The Usual Form, (held to be sufficient.)*

Judgment for the *Plaintiff* for \$5 principal, with interest, from this *July* 10, 1859.

JAMES MACK, J. P.

NOTE.—The above entry is usually made by the Justice on his Docket opposite the case.

In entering up Judgment, where either of the parties shall make it appear, (or it appears on the paper sued on,) "that he, she or they, signed said obligation, as a security, or securities only, it shall be the duty of the Justice to enter up Judgment against him, her or them, as such, and award Execution in the same manner; which, when satisfied by such security, (or out of his property,) he, she or they shall have the control and benefit of said Execution, for the purpose of remunerating him, her or themselves, out of their principal.



*Appeal Bond given by the Defendant.*

## GEORGIA—HOUSTON COUNTY.

JOHN DOE } Case in Justices' Court for 619th District, G. M.  
           <sup>vs.</sup> } Judgment for *Plaintiff* for \$5, with costs.  
 RICHARD ROE. }

The *Defendant* being dissatisfied with said Judgment, and having paid the costs, demands an Appeal, and brings *John Jones* as his security; and they bind themselves to the *Plaintiff* for the eventual condemnation money.

*Witness their hands and seals, this July 13, 1859.*

Approved—

*James Mack, J. P.*

RICHARD ROE. [L. S.]

JOHN JONES. [L. S.].

*Stay of Execution.*

## GEORGIA—HOUSTON COUNTY.

JOHN DOE } Case in Justices' Court for 619th District, G. M.  
           <sup>vs.</sup> } Judgment for *Plaintiff* for \$5, with costs.  
 RICHARD ROE. }

The *Defendant* comes forward, pays the costs, demands a stay of Execution, and brings *John Jones* as his security; and they bind themselves to the *Plaintiff* for the amount of said Judgment, according to the statute.

*Witness their hands and seals, this July 14, 1859.*

Approved—

*James Mack, J. P.*

RICHARD ROE. [L. S.]

JOHN JONES. [L. S.]

*Affidavit to Appeal without paying Costs or giving Security.*

## GEORGIA—HOUSTON COUNTY.

JOHN DOE } Case in Justices' Court for 619th District, G. M.  
           <sup>vs.</sup> } Judgment for *Plaintiff* for \$5, with costs.  
 RICHARD ROE. }

Personally came before me, a Justice of the Peace for said County, *Richard Roe*, who being sworn, says that he is advised and believes that he has a good cause of Appeal, in the above stated case, and that, owing to his poverty, he is unable to pay the costs and give the security, as now required by law.

Sworn to and subscribed,  
 before me, this July 13, 1859.

*James Mack, J. P.*

RICHARD ROE.

NOTE.—This oath must be in writing, and must be filed among the papers of the case.

*Names of the Jurors to be Summoned.*

STATE OF GEORGIA, }  
   Houston County. } *To John Jacobs, Constable of the 619th District, G. M.*

You are hereby authorized and commanded to summon *James West*,

*Thomas M. Rix, William House, Asa T. Walch, Marcus Kunze, Jacob Snider and Samuel Felder*, to be and appear at the Court-House, in and for the aforesaid District, on the *twelfth* day of *August* next, by *ten* o'clock in the forenoon, for the purpose, then and there, of being sworn as Jurors, in said Court. This *July 10, 1859.*

JAMES MACK, J. P.

THOMAS HALL, J. P.

NOTE.—The practice is, for the Justice to draw the names of the Jurors from the Jury-Box, and to enter them on his Docket; a list is then furnished the Constable, and he notifies each Juror.

### *Summons for Jurors.*

STATE OF GEORGIA, } To *Samuel Felder*—Appear at the Court-House,  
Houston County. } in and for the 619th District, G. M., on the *twelfth*  
day of *August* next, by *ten* o'clock in the forenoon of that day, to be  
sworn as a Juror in said Court. Herein fail not. This *July 10, 1859.*

JOHN JACOBS, *Constable.*

NOTE.—The Constable should make out a separate Summons for each Juror, and be careful to serve it five days before the Court, at which the Juror is required to appear.

For the Oath to be administered to the Jury, see No. 39 of this Title.

### *Verdict of the Jury.*

We, the Jury, find for the Plaintiff, the sum of *five* dollars for his principal debt, and the costs of suit. This *August 12, 1859.*

MARCUS KUNZE, *Foreman.*

### *Writ of Fieri Facias.*

STATE OF GEORGIA, } To all and singular the Constables of said  
Houston County. } County—Greeting.

We command you, that of the goods and chattels, lands and tenements of *Richard Roe*, principal, and *John Jones*, security on *appeal*, you cause to be made the sum of *five* dollars, principal debt, and *two* dollars and *fifty* cents costs; which *John Doe*, on the *tenth* day of *July*, eighteen hundred and *fifty-nine*, in the Justices' Court, in and for the 619th District, G. M. in said County, recovered against said Defendants, for his principal debt and costs. And have the said moneys before the said Court, on the first day of the next ensuing term thereof, to render to the said *John Doe*, for his debt and costs, aforesaid. And have you then and there this Writ.

*Given under my hand and official signature, August 15, 1859.*

JAMES MACK, J. P.

*Levy by the Constable on the back of the fi. fa.*

Levied this *fi. fa.* on a *Black Horse*, as the property of the Defendant, this *September 10, 1859.*

JOHN JACOBS, *Constable.*

NOTE.—If the Constable, at the instance of the Defendant, levy the Execution on Lands or Negroes, he should state in his levy, "property pointed out by the Defendant." If he is compelled, for want of other property, to levy the *fi. fa.* on Lands or Negroes, he should make an entry of that fact as part of his levy, thus: "There being no other property on which to levy this *fi. fa.*, I have levied the same on a *Negro Boy* named *Sam.*" This *September 5, 1859.*

JOHN JACOBS, *Constable.*



*Constables' Advertisement.*

STATE OF GEORGIA, } On the *tenth* day of *October* next, between the  
     *Houston* County. } lawful hours of sale, will be sold before the  
 Court-House door, in the 619th District, G. M. a certain *Black Horse*,  
*five* years old, *sixteen* hands high, in *fine* order and *well* broke. Levied  
 on as the property of *Richard Roe* to satisfy a *fi. fa.* issued from the  
 Justices' Court, in and for said District, in favor of *John Doe*, against  
 said *Richard Roe*. This *September* 10, 1859.

JOHN JACOBS, *Constable*.

NOTE.—Constables' Sales must be made "on the first day of each Court."—See 84.

*Constables' Bill of Sale.*

STATE OF GEORGIA, } Received of *Samuel Felder*, *fifty* dollars for a  
     *Houston* County. } certain *Black Horse*, levied on by virtue of a *fi. fa.*  
 issued from the Justices' Court, in favor of *John Doe*, against *Richard*  
*Roe*, and which *Black Horse* was this day sold, as the property of said  
*Richard Roe*. This *October* 10, 1859.

JOHN JACOBS, *Constable*.

*Backing an Execution.*

STATE OF GEORGIA, } To any lawful officer, to execute and return.  
     *Chatham* County. }  
 Given under my hand and official signature, this *December* 1, 1859.  
 WILLIS STONE, J. P.

## FORMS IN CLAIM CASES.

*Affidavit of the Claimant.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
     *Houston* County. } Justice of the Peace in and for said County,  
*James Wall*, who being duly sworn saith, that a certain *Black Horse*  
 levied on as the property of *Richard Roe*, by virtue of a *fi. fa.* issued  
 from the Justices' Court for the 619th District of said County, in favor  
 of *John Doe*, is the right and property of deponent, to the best of his  
 knowledge and belief.

Sworn to and subscribed,  
 before me, this *Sept.* 10, 1859. }  
*James Mack*, J. P.

JAMES WALL.

NOTE.—This affidavit may be made by an Attorney, Agent, Guardian, Executor or Administrator, as the case may be; in which case, it should be so stated in the affidavit; thus, "but is the property of deponent as Guardian of John Smith, a minor, to the best of his knowledge and belief."

Where the *fi. fa.* has been levied on a slave, who is claimed, "such Execution and Claim shall be returned to the next term of the Superior or Inferior Court, whichever may first happen, of the County in which such Execution was issued."

*Bond given by the Claimant.*

STATE OF GEORGIA, } We, *James Wall* as principal, and *Alexander*  
*Houston County.* } *Lee* as security, both of the State and County  
 aforesaid, acknowledge ourselves held and bound to *John Doe*, in the  
 sum of *fifty* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, *John Jacobs*, one of the Constables of said County, has levied an execution, (issued from the Justices' Court of the 619th District, G. M.) in favor of *John Doe*, against *Richard Roe*, on a certain *Black Horse*, as the property of said *Richard Roe*, and which *Horse* has been claimed by said *James Wall*. Now, should said *James Wall* well and truly pay the Plaintiff-in-execution, all costs and damages which he may sustain, in case it should appear such claim was frivolous and intended for delay only, then the above obligation to be void ; otherwise, of force. This *September 10, 1859.*

Attest—

*James Mack, J. P.*

JAMES WALL, *prin'l.* [L. S.]

ALEXANDER LEE, *sec'ty.* [L. S.]

*Forthcoming Bond in Claim Case.*

STATE OF GEORGIA, } We, *James Wall* as principal, and *Thomas West*  
*Houston County.* } as security, acknowledge ourselves held and bound  
 unto *John Doe*, of said County, in the sum of *one hundred* dollars ;  
 subject to the following condition—

The condition of the above obligation is as follows—whereas, *John Jacobs*, Constable, has levied an execution (issued from the Justices' Court of the 619th District, G. M.) in favor of *John Doe* against *Richard Roe*, on a certain *Black Horse*, and which *Horse* has been claimed by said *James Wall*. Now, should said *James Wall*, well and truly, deliver said *Horse*, to the said Constable, at the time and place of sale, provided said *Horse* should be found subject to said execution, then this obligation to be void ; otherwise of force. This *September 10, 1859.*

Attest—

*James Mack, J. P.*

JAMES WALL, *prin'l.* [L. S.]

THOMAS WEST, *sec'ty.* [L. S.]

NOTE.—The amount of the Bond “shall be in double the value of the property levied upon, to be estimated by the levying officer.” And it must “be payable to the Plaintiff.” When the Bond is given, it is the duty of the levying officer to leave the property in the possession of the Claimant.

## PROCEEDINGS AGAINST DEFAULTING WITNESS.

*Order Nisi.*

JOHN DOE, }  
*vs.* } In Justices' Court, 619th District, Georgia Militia.  
 RICHARD ROE. } *July Term, 1859.*

It appearing to the Court by the return of *John Jacobs*, Constable,



that *William Thomas* was duly summoned as a witness in the above case, (on the part of the *Plaintiff*,) to attend at the *present* term of the Court. And said *William Thomas* having failed to attend, as afore-said; it is, therefore ordered, that said *William Thomas* show cause at the next term of this Court, why he should not be considered in contempt of the process of the Court.

*Given under my hand and official signature,*

JAMES MACK, J. P.

### *Answer of the Witness.*

STATE OF GEORGIA, } In answer to a rule *Nisi* from the Justices'  
     *Houston County.* } Court, in and for the 619th district, G. M.,  
 calling upon respondent to show cause why he should not be considered in contempt of the process of said Court, for not attending as a witness in the case of *John Doe*, against *Richard Roe*, at the *July* term of said Court, after being duly sworn, respondent saith, *that it was not convenient for him to attend said Court, at said term; that respondent was required to attend in the city of Macon, on that day, to urgent business of his own.* All which is respectfully submitted, this *August 10, 1859.*

Sworn to and subscribed, }  
 before me. *John Ross, J. P.* }

WILLIAM THOMAS.

### *Rule Absolute.*

JOHN DOE }  
     *vs.* } In the Justices' Court of the 619th district, G. M.  
 RICHARD ROE. } *August Term, 1859.*

A rule *Nisi* against *William Thomas*, having issued in the above case, requiring said *William Thomas* to show cause why he should not be considered in contempt of the process of said Court, (he having been subpœnaed as a witness to testify in a case pending in said Court, and having failed to attend,) and the cause submitted by said *William Thomas*, for his default, being adjudged unsatisfactory and insufficient; it is ordered that said rule *Nisi* be made absolute—that said *William Thomas* be and he is hereby fined in the sum of *ten* dollars, for contempt of the process of the Court, and the costs of these proceedings.

JAMES MACK, J. P.

NOTE.—All the papers in the above proceeding should be carefully filed away by the presiding Justices of the Court.

## INTERROGATORIES.

### *Commission.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the  
     *Houston County.* } Peace for the 619th district, G. M. To  
                                     — Greeting:

Whereas, there is a certain matter of controversy, now pending in

the Justices' Court of the 619th district, Georgia Militia, in the County aforesaid, between *John Doe* and *Richard Roe*. And whereas, *John Smith* is a material witness in said suit, and resides out of the aforesaid County, and cannot attend our said Court, without manifest inconvenience.

Now, know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you; and you, or any two or more of you, (all being freeholders and one of you a Justice of the Peace,) are hereby authorized and required to cause the said *John Smith*, personally, to come before you, and after he is duly sworn, to examine him concerning the said suit, agreeably to the Interrogatories hereunto annexed. And the answers to the same being plainly and distinctly written, you are to send the same closed up, under your hands and seals, to our said Court, to be held on the *twelfth* day of *August* next, together with this writ.

*Witness my hand and official Signature, this July 10, 1859.*

JAMES MACK, J. P.

### *Direct Interrogatories.*

JOHN DOE, } Case in the Justices' Court, 619th District, Georgia  
vs. } Militia, *Houston* county.  
RICHARD ROE. }

Interrogatories to be exhibited to *John Smith*, a material witness on the part of the *Plaintiff*, and who resides out of the said County of *Houston*.

1st. Do you know the parties in the above-stated case?

2d. Please state all you know, of your own knowledge, or have heard the Defendant say, going to show that he owed the Plaintiff money; when and where was the statement made?

3d. How much did the Defendant say he owed the Plaintiff?

4th. State fully and at large all you know that will benefit the Plaintiff in the trial of said case, as if particularly interrogated thereto.

JOHN DOE, *Plaintiff*.

NOTE.—Notice and copy of the Interrogatories filed, must be served on the Defendant, unless he will consent that Commission shall issue immediately, in which case the following entry should be made on the back of the original Interrogatories: "Copy and Notice of those Interrogatories waived—let Commission issue upon application. This *July 20, 1859*."

RICHARD ROE, *Def't*.

If the Defendant refuses to agree to the above course, which is usual in practice, the Plaintiff should serve him with a copy of the Interrogatories, and annex to the copy the following notice: "*Richard Roe*—You are hereby notified that I have, this day, filed in the office of *James Mack*, Justice of the Peace, original Interrogatories, of which the foregoing is a copy, and that I shall apply for Commission, to take the testimony of the witness in said Interrogatories named, in terms of the statute in such case made and provided. This *July 20, 1859*."

JOHN DOE, *Pl't'f*.

If the latter course has to be pursued, the original Interrogatories must remain, (after copy and notice served,) five days in the office of the Justice of the Peace, before Commission can issue.

### *Cross Interrogatories.*

1st. Did not the Defendant say, in the conversation of which you testify, that he had paid the Plaintiff all the money he ever owed him?

2d. Do you not know, from what you have heard the Plaintiff say, that the Defendant has paid him all the money he ever owed him?



3d. State all you know that will benefit the Defendant, as if particularly interrogated thereto.

RICHARD ROE, *Def't.*

*Answers to the Direct Interrogatories.*

JOHN DOE  
                   *vs.*  
 RICHARD ROE. } Suit in Justices' Court, 619th District, *Houston County.*

STATE OF GEORGIA, } By virtue of a Commission to us directed, from  
                   *Twiggs County.* } the Justices' Court of the 619th District, Georgia  
 Militia, (*Houston County*), we have caused *John Smith*, the witness  
 named to come before us, and being sworn true answers to make, to  
 certain Interrogatories to said Commission annexed, he answers as fol-  
 lows, to wit—

To the 1st Direct Interrogatory—"I do know the parties."

To the 2d Direct Interrogatory—"I was at Perry on Saturday the  
 first day of June last, and in a conversation with the Defendant, he ad-  
 mitted he owed the Plaintiff fifteen dollars on an account for the year  
 1858."

To the 3d Direct Interrogatory—"I know nothing more that will  
 benefit the Plaintiff."

*Answers to the Cross Interrogatories.*

To the 1st Cross Interrogatory—"If in our conversation, the De-  
 fendant said he had paid the Plaintiff, I do not recollect it—I did not  
 so understand the Defendant."

To the 2d Cross Interrogatory—"I do not recollect having heard  
 the Plaintiff say, at any time, that the Defendant had paid him all the  
 money he ever owed him."

To the 3d Cross Interrogatory—"I know nothing that will benefit  
 the Defendant."

Answered, subscribed, and sworn }  
 to, before us, this *July 25*, }  
 1859.

JOHN SMITH.

JOHN JACKSON, *Com'r.*

JAMES JONES, *Com'r.*

CHARLES WILSON, J. P., *Com'r.*

NOTE.—If after being notified, the witness refuses or neglects to appear before the  
 Commissioners—or, if after appearing he refuses to answer—or answers evasively and  
 ambiguously, he may be punished in the same manner as if the case were pending in the  
 Superior Court.

*Directions for Executing Interrogatories.*

1st. Fill the blank in the Commission with the names of the Com-  
 missioners; two Commissioners will answer; one must be a Justice of  
 the Peace; the others must be freeholders.

2d. The Answers may be written on a separate sheet of paper; (if,  
 as is generally the case, that which contains the Interrogatories is not

sufficiently large,) and attached to the Commission by a wafer. But the Answers must not be in the hand-writing of either of the parties, or of any attorney engaged in the case; nor must they be previously written by any such person, and then transcribed.

3d. Direct the packet, on the blank side, thus :

JOHN DOE	}	Case in Justices' Court, 619th District, Georgia Militia.
vs.		
RICHARD ROE.		
To <i>James Mack</i> , J. P.		<i>Perry, Houston County, (G'a.)</i>

On the sealed side thus :

JOHN JACKSON, Com'r.	JAMES JONES, Com'r.	CHAS. WILSON, J. P. Com'r.
-------------------------	------------------------	-------------------------------

4th. The packet must be sealed up with as many seals as there are Commissioners, (not less than two, one of whom must be a Justice of the Peace;) each Commissioner must write his name across one of the seals.

5th. The packet may be forwarded by mail; if that course be taken, the Commissioners, or one of them, should deliver it to the Post-Master, who makes the following entry upon the packet :

"Received, *Marion, Twiggs County, (Ga.)* from the hands of *Charles Wilson, J. P.*, one of the Commissioners, this packet, to be forwarded by due course of Mail. This *July 30, 1859.*

"STEPHEN BEAN, P. M., *Marion.*"

6th. The Post-Master of the place to which the packet is directed and where the Interrogatories are to be used, must bring the packet into Court, and swear "That it came to his office by due course of Mail; has remained in his possession ever since, and has not been opened or altered."

7th. The packet may be returned by the party or a private person; in that case, he will have to swear, in open Court, "That he received it from the hands of the Commissioners, or one of them; that it has remained in his possession ever since, unopened and unaltered."

8th. When the packet is presented in Court and received, the party must move the Court for leave to open it. The following entry should be made on the packet:

"Received on the oath of *John Doe*, and leave to open granted; this *August 10, 1859.*

"JAMES MACK, J. P."



AN ACT supplementary to the act of 14th December, 1811.—*Approved Dec. 12, 1816.*

Party signing obligation as security only, on the fact being proved, shall have control of the *fi. fa.* after he has paid it off. 62. In all cases in justices' courts, commenced against joint-obligors or promissors, if any one or more of them shall make it appear to the satisfaction of the court, that he, she or they, signed said obligation as a security or securities only, it shall be the duty of the justice to enter up judgment against him, her or them as such, and award execution in the same manner; which when satisfied by such security, or out of their property, he, she or they, shall have the control and benefit of said execution, for the purpose of remunerating him, her or themselves, out of their principal, in the same manner as if they had been security on the stay of execution: *Provided*, judgment and execution shall be against the principal also.

AN ACT to regulate and establish an uniform practice in Justices' Courts.—*Approved Dec. 9, 1819.*

Uniformity of practice. 63. SEC. I. From and after the first day of January next, the proceedings in the justices' courts shall be uniform throughout the State.

First Term, appearance term; second term, judgment term. 63\*. SEC. II. The first term shall be deemed and considered as the appearance term, when the case shall be docketed, on what shall be called the appearance docket; and on the defendant failing to appear, judgment shall be entered by default, as in the superior court. And at the second term, unless there is a sufficient showing, judgment shall be entered up: *Provided nevertheless*, the party or parties shall be entitled to an appeal, agreeably to the judiciary law now in force in this State.

Jurisdiction, as to amount. 64. SEC. III. All justices of the peace shall have power, in all cases of debt or liquidated demand, to give judgment for any sum not exceeding \$30, [\$50,] exclusive of interest and cost.—[*See 81.*]

AN ACT to provide a more easy and convenient mode of proving open Accounts, so as to make them evidence in Justices' Courts.—*Approved Dec. 26, 1827.*

*Whereas*, the practice now pursued by the different Justices' Courts in this State, of requiring open accounts to be proven in open court in order to make them evidence, is found in many instances to be highly inconvenient; for remedy whereof—

Party living or removing out of the County, Account may be proved in the County where contracted. 65. *Be it enacted*, That from and immediately after the passage of this act, in any suit which may be instituted in a justices' court within this State, upon an open account against any party who may have removed without the jurisdictional limits of the county in which such account was contracted; or who may reside without the county in which the account was contracted, the said account may be proven by a written affidavit before any officer authorized to administer an oath; and when so proven shall be received in evidence upon the trial of said suit, as though the same had been proven in open court. *Provided however*, that if the defendant will make an affidavit in writing, denying the justice and fairness of the whole or any part of the said account, the said court shall not give judgment for so much thereof as may be so traversed or controverted, unless supported by other proof.

SEC. II. All laws and parts of laws militating against this act, are hereby repealed.

Account of the Plaintiff.

						Dr.
John Doe to Richard Roe,						
	To	4 lbs. Tobacco,	-	-	-	\$1 00
1859,		7 lbs. Sugar,	-	-	-	1 00
January 1.		6 lbs. Coffee,	-	-	-	1 00
		8 lbs. Nails,	-	-	-	1 00
		1 Hat,	-	-	-	5 00
		1 pair Shoes,	-	-	-	1 50
		1 pair Boots,	-	-	-	5 00
						<hr/>
						\$15 50

Affidavit of the Plaintiff.

STATE OF GEORGIA, } In person appeared before the undersigned,  
Bibb County. } a Justice of the Peace in and for said County,  
John Doe, who being sworn, saith, that he has no other way of proving the above Account, (that is in his power to procure,) but by his own oath. And he further swears, that said Account is just and true as it stands stated, and that Defendant, (resident in Houston County,) contracted said Account with deponent, deponent being a resident in the city of Macon, and County of Bibb. This May 1, 1859.

Sworn to and subscribed, }  
before me, } JOHN DOE.  
John Smith, J. P. }

NOTE.—If the Defendant resided in the same County with the Plaintiff when he contracted the Account, and removed to another County, then it should be stated, in the affidavit, thus : “ And that Defendant hath removed from the said County of Bibb, where said Account was contracted, to the County of Houston,” etc.

Affidavit of the Defendant.

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } Justice of the Peace, in and for said County,  
Richard Roe, (against whom a suit has been instituted in the Justices' Court of the 619th District, G. M. by John Doe, of the County of Bibb, for the sum of fifteen dollars,) who being sworn, saith, that said Account is unjust and unfair, in this, to wit : that deponent did not purchase from Plaintiff, four pounds of Tobacco, or any other quantity. That deponent did not purchase from Plaintiff, six pounds of Coffee, or any other quantity.

Sworn to and subscribed, }  
before me, this June 10, 1859. } RICHARD ROE.  
James Mack, J. P. }

AN ACT for the recovery of Costs in Justices' Courts, in certain cases.—  
Approved Dec. 26, 1831.

66. SEC. I. From and after the passage of this act, in all cases carried up by writ of certiorari from a justices' court to the superior court, and the said certiorari shall be sustained by the said court, and the proceedings in the court below set aside, without further order. And in all cases carried up in like manner, from a justices' court, to the Superior Court, as aforesaid, and the writ of certiorari shall be sustained and a new trial ordered, the plaintiff in certiorari, provided he finally succeeds in his cause, shall recover of the defendant all cost that he

Where the writ of Certiorari is sustained and no further order is made. And where, upon the return of the Writ, a new trial is



ordered, how or she may have been compelled to pay and lay out, before a *certiorari* could costs are to be recovered. be granted.

Execution to 67. SEC. II. It shall be the duty of the justices of the peace, in all such issue for costs. cases as are mentioned in the foregoing section, to issue execution in the name of the prevailing party, for all costs that may have accrued in the said case.

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to authorize Constables to serve Summons nine days before the sitting of the Court to which they are made returnable.—*Approved Nov. 24, 1841.*

Summons to 68. SEC. I. *Be it enacted*, That from and after the passage of this act, it be served nine shall be lawful for the constables in this State, to serve all summons to days before the Court to them directed, nine days before the sitting of the court to which they are which it is re-made returnable: *Provided*, the same shall have been issued and bear date, turnable; but ten days previous to the sitting of the court to which they are made re-must issue and turnable. Any law, usage or custom, to the contrary notwithstanding. bear date ten days before.

AN ACT to require all Endorsers [*Endorsees*] to sue the principal in his, her or their District.—*Approved Dec. 10, 1841.*

Principal first 69. SEC. I. *Be it enacted*, That from and after the passage of this act, sued, or else that in all cases where any person or persons shall endorse a note or notes, endorser sued it shall not be lawful for the endorsee to sue the endorser, (where the prin-cipal and endorser live in the same county) without first suing the prin-cipal in his, her or their district: *Provided always*, that nothing in this act shall prevent the endorser being sued in the same action and the same district with the maker: *And provided*, that this act shall only apply to justices' courts.

AN ACT to authorize Defendants in Execution to point out any property belonging to them, in their possession.—*Approved Dec. 27, 1842.*

Defendant 70. SEC. I. *Be it enacted*, That from and after the passage of this act, may point out the defendants in execution, arising in justices' courts, shall have the right Land or Ne- to point out to the levying officer, either land or negroes, in the possession groes. of the defendant: *Provided however*, nothing shall be so construed in this act, to restrain the officer from levying such execution on a sufficient amount of property to satisfy the same.

SEC. II. All laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to alter, repeal and amend, so much of the 21st section of an act, entitled "an act to alter and amend the several Judiciary Acts now in force in this State, so far as relates to Justices' Courts," approved Dec. 14, 1811, which requires Constables to advertise all intended sales at one or more of the most public places in the County.—*Approved Dec. 27, 1842.*

How and 71. SEC. I. *Be it enacted*, That from and after the passage of this act, where Consta- so much of the above-recited act as requires constables to advertise all bles must ad- tended sales at one or more of the most public places in the county, be and vertise their the same is hereby repealed. And in lieu thereof, that hereafter it shall sales. be the duty of the constables of this State, to advertise all intended sales, by them to be made, at three or more of the most public places in their proper districts.

SEC. II. All laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to declare and make certain the law of this State, in relation to the Jurisdiction of Justices' Courts, in certain cases.—*Approved Dec. 26, 1842.*

*Whereas*, it has been of late, held and considered, in some parts of this State, that the act of 1811, relating to Justices' Courts, and authorizing Justices of the Peace, in certain cases, to give Judgment in several cases on the same day, between the same parties, and in favor of the same Plaintiff; and when the aggregate amount of such Judgments, exceeds the sum of thirty dollars, &c., is contrary to the constitution of the State, as it then existed, and is therefore, of no authority. *And whereas*, it is right and proper, that the law in this particular should be made certain, according to its long construction and understanding—

72. SEC. I. *Be it therefore enacted*, That in all cases when any bond, note, account or other agreement, (gaming debts excepted,) which in its original exceeded the sum of thirty dollars, but has been reduced by bond or bonds, note or notes; although of equal dates, and payable at the same time, to a sum or sums, under or of thirty dollars each, that then and in every such case, it shall and may be lawful for any person or persons, who has or have in his, her or their hands, any such note or notes, bond or bonds, or accounts, as aforesaid, to bring suit thereon in the justices' court, as in other cases. And in such case, the justice or justices are hereby authorized to give judgment, as in other cases. Any opinion, usage or construction, to the contrary notwithstanding.

Several demands, each under thirty [fifty] dollars, may be sued to the same Court.

AN ACT to regulate Justices' Courts, in cases of Set-Offs.—*Approved Dec. 27, 1842.*

73. SEC. I. *Be it enacted*, That from and after the passage of this act, in all cases in the justices' courts of this State, where the demand or claims of the defendant, is greater in amount and exceeds the plaintiff's demand, it shall be the duty of the justices to allow a set-off, as is now by law allowed and pointed out, and give judgment against the plaintiff in favor of the defendant: *Provided*, that the balance in favor of the defendant does not exceed the sum of thirty dollars, including both principal and interest.

Set-off allowed and Judgment given in favor of Defendant.

74. SEC. II. In all cases where the defendant's demand or claim exceeds the sum of thirty dollars in balance, then it shall be the duty of the justices, to enter a credit in favor of the plaintiff, for the amount of his debt on the defendant's claim.

Defendant's claim, if over fifty dolls., to be credited.

75. SEC. III. When the claim of the defendant is an open account, the justices may allow such open account to be proven in court: *Provided*, that neither of the parties shall be allowed to prove their accounts by their own oath, in any sum over thirty [fifty] dollars.—[See 82.]

Account, how proven.

SEC. IV. All laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to establish Lost Papers, in the Justices' Courts of this State, and for other purposes therein specified.—*Approved Jan. 17, 1852.*

*Whereas*, it often happens that notes, bills, bonds, summons, executions and other papers belonging to justices' courts, frequently are lost, destroyed or mislaid, and thereby, delays occur in the administration of justice, in the said courts, in consequence of the doubts that exist as to the authority and mode of establishing such lost papers, in said courts; for remedy whereof—



How lost papers in Justices' hands may be establish'd.

76. SEC. I. *Be it enacted*, That from and after the passage of this act, when any note, bill, bond or any other evidence of debt; or any summons, execution, or any other papers belonging or appertaining to any suit, or other proceeding, in any of the justices' courts in this State, shall be lost, destroyed or mislaid, from the hands of the magistrates, then and in that case, the magistrate or justice of the peace, may by reason and in virtue of his office, establish *instantly*, in substance, a copy in lieu of the original.

How lost papers in Justices' Courts may be established by party.

77. SEC. II. That when any note, bill, bond, or other evidence of debt, or any summons, execution, or other paper or papers, belonging or appertaining to any suit, or other proceeding, in any of the justices' courts in this State, shall be lost, destroyed or mislaid, by any other person than the presiding magistrate or justice of the peace; or in any manner become so lost, destroyed or mislaid, the party or parties, plaintiff, defendant or defendants, or any other person interested, wishing to use said lost papers, shall be permitted to establish and use, in lieu of such lost original, a copy in substance of the same, by making affidavit, that such paper to be used, is in substance a copy of the original, and that the original is lost, destroyed or mislaid, and is not in the power, custody or control of the party seeking to use it. And the papers so established, as mentioned in the first and second sections of this act, shall and may be used in any suit or other proceeding, in any justices' court in this State, wherein such suit is pending, in lieu of said original: *Provided*, that this act shall be so construed as not to authorize the establishing of any paper in any of the justices' courts in this State, which is not in suit or appertaining to some suit, or other proceedings, in said courts: *And provided further*, that if either party, plaintiff or defendant, shall claim to be surprised on account of the establishing of any such lost paper, said plaintiff or defendant may be entitled to a continuance for one term.

Papers must be connected with some suit.

Continuance allowed.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Copy of Paper lost by the Magistrate.*

Ten days after date I promise to pay *John Doe*, or bearer, thirty dollars. Value received this *May 1*, 1859.

RICHARD ROE.

The original Note, of which the above is a copy, in substance, having been sued upon, and being left in the possession of the undersigned, has been lost (destroyed or mislaid, as the case may be), pending said suit; therefore, the above is hereby established in lieu of the lost original. In open Court, this *June 10*, 1859.

JAMES MACK, J. P.

### *Copy of Paper lost by the Party.*

Ten days after date I promise to pay *John Doe*, or bearer, thirty dollars. Value received this *May 1*, 1859.

RICHARD ROE.

### *Affidavit of the Party.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
*Houston County.* } Justice of the Peace in and for said County, *John Doe*, the payee in the above copy Note, who being duly sworn, saith, that he was possessed, in his own right, of the original Note, of which the above is a copy in substance and effect. That suit was instituted

on said Note, in the Justices' Court of the 619th District, Georgia Militia. That during the pendency of said suit, said original Note (being in the possession of deponent), has been lost (destroyed or mislaid, as the case may be). And deponent further swears, that said original Note is not in his power, custody or control, and prays that the above copy may be established in lieu of the lost original. This *June 10, 1859.*

Sworn to in open Court,  
before me,  
*James Mack, J. P.*

JOHN DOE.

AN ACT to compel parties Plaintiffs in Justices' Courts to pay the cost before taking out a *Capias ad Satisfaciendum*. And to provide for the return of Commissions by Mail.—*Approved Feb. 16, 1854.*

78. SEC. I. *Be it enacted*, That all plaintiffs in justices' courts, in this State, shall be compelled to pay all costs which have accrued in said court or courts, before taking out a *capias ad satisfaciendum*, in such case or cases. And the justice of the peace issuing such *capias ad satisfaciendum*, shall enter upon the same, in each case, "cost paid by plaintiff or plaintiffs," as the case may be. And such entry shall be sufficient evidence of the fact, that the cost is so paid. And the plaintiff or plaintiffs may collect the cost, with the principal and interest, out of the defendant or defendants, for the benefit of said plaintiff or plaintiffs.

All costs to be paid before *ca. sa.* issued; to be endorsed on *ca. sa.* and collected of Defendant.

79. SEC. II. That all commissions to take testimony by interrogatories, hereafter issued by any justice of the peace in this State, may be returned by mail when executed, in the same way and manner, as commissions issued by the clerks of the superior courts in this State, are returned under the rules of said courts.

Interrogatories may be returned by Mail.

### *Capias ad Satisfaciendum.*

STATE OF GEORGIA, } To all and singular the Constables of said  
*Houston County.* } County—Greeting.

We command you, that you take the body of *Richard Roe*, if to be found in your County, and him safely keep, so that you have his body before the Justices' Court, in and for the 619th District, Georgia Militia, to be held on the *first Saturday in June* next; then and there to satisfy *John Doe*, in the sum of *thirty* dollars, principal debt, with interest from the 1st day of *January, 1859*, and \$2,50 costs; which said *John Doe* recovered against said *Richard Roe*, in said Court, at *May Term, 1859*. Besides, your fees for this service; and have you at our said Court this Writ.

*Witness my hand and official signature, this May 10, 1859.*

JAMES MACK, J. P.

Amount of Cost endorsed, \$2,50.

AN ACT to authorize the Justices' Courts to establish lost Papers, to the amount of their Jurisdiction, and charge for the same [*as*] prescribed by this act.—*Approved March 4, 1856.*

80. SEC. I. *Be it enacted*, That from and after the passage of this act, where any person shall seek to establish lost papers, under the 6th section of the Judiciary Act of 1799, he shall, if the amounts involved do not ex-

Lost papers (not in suit,) how established.



ceed the jurisdiction of Justices' Court, present to the justices' court, (together with a copy in substance of the paper lost, as nearly as he can recollect, which copy shall be sworn to by the party, or provided [*proven*] by other evidence,) where a rule *nisi*. may be obtained, calling upon the opposite party, to show cause, if any he has, why the copy should not be established, in lieu of the original so lost. Which rule *nisi*. shall be personally served ten days before court, on the party, if to be found within the county; and if he cannot be found, then said rule *nisi*. shall be published in some public gazette of the State, for the space of one month.

Fees for this  
service.

81. SEC. II. That for the issuing and serving said rule upon the party, the justices and constables shall have the same fees as now provided by law for issuing and serving writs in justices' courts; and for issuing certified copies of said lost papers, the cost shall be the same as upon issuing executions.

### *Petition to establish lost Paper.*

STATE OF GEORGIA, } To the Justices' Court of the 619th District,  
Houston County. } Georgia Militia.

The petition of *John Doe* respectfully sheweth that he was heretofore possessed, *in his own right*, of a certain original *Note*, made by *Richard Roe*, of said County and District (a copy in substance of which *Note* is hereunto annexed). That on the *first* day of *May*, 1859, Petitioner lost said *Note* out of his possession. Wherefore, Petitioner prays that said annexed copy may be established in lieu of the lost original. This *May* 10, 1859.

JOHN DOE.

### *Copy of the lost Original.*

*Ten days* after date I promise to pay *John Doe*, or bearer, *forty* dollars. Value received, this *January* 1, 1859.

RICHARD ROE.

### *Affidavit of the Party.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
Houston County. } Justice of the Peace in and for said County, *John Doe*, who being sworn, saith, that the above *Note* is a copy in substance of the lost original, as nearly as he can recollect.

Sworn to and subscribed, }  
before me, this *June* 1, 1859. }  
*James Mack, J. P.*

JOHN DOE.

NOTE.—The loss of the paper sought to be established, may be proven "by other evidence," if the circumstances of the case will warrant it. The statute expresses but one instance in which a paper may be established, that is, when it is "*lost*;" but it is to be understood that where a paper is "*destroyed*," in any way, it is included in the meaning of the statute, and may be established under it.

### *Rule Nisi.*

STATE OF GEORGIA, } Justices' Court, 619th District, Georgia Militia.  
Houston County. } *June* Term, 1859.

It appearing to the Court, by the Petition and Affidavit of *John Doe*, that he was possessed of an original *Note*, made by *Richard Roe*, on the *first* day of *January* last, for the sum of *forty* dollars, due *ten*

*days after date.* And it appearing that, on the *first* day of *May last*, said *John Doe* lost said original *Note*; therefore, ordered, that said *Richard Roe* show cause, if any he can, at the next term of this Court, why the copy filed should not be established, in lieu of the lost original; agreeably to the statute in such case made and provided. And it is further ordered, that a copy of this rule be served on said *Richard Roe*, personally, or by publication.

### *Rule Absolute.*

STATE OF GEORGIA, } Justices' Court, 619th District, Georgia Militia.  
Houston County. } *July Term, 1859.*

A rule *nisi*. having been issued at the last term of this Court, calling upon *Richard Roe*, to show cause why the copy of an original *Note* (given by *Richard Roe*, and described in said rule *nisi*., and lost by said *John Doe*.) should not be established in lieu of the lost original. And no sufficient cause having been shown to the contrary by said *Richard Roe*; therefore, it is hereby ordered, that the copy *Note* filed in this Court, be and the same is hereby established in lieu of the lost original.

AN ACT to raise the Jurisdiction of the Justices of the Peace.—*Approved March 5, 1856.*

81\*. SEC. I. *Be it enacted*, That from and after the 1st day of March next, the jurisdiction of justices of the peace shall extend to the amount of fifty dollars principal, with interest. Jurisdiction  
fifty dollars.

82. SEC. II. That it shall and may be lawful for all promissory notes, accounts, and all other evidence of debts, that do not exceed fifty dollars, to be sued before a justice of the peace, in a justices' court, in the same manner as is now prescribed by law. And when any person shall be sued in a justice court on a sum that exceeds thirty dollars, and a judgment obtained against the party defendant, the defendant, within four days after the adjournment of said court, upon paying all costs that may have occurred [*accrued*], and giving good and sufficient security for principal and interest involved in the case, shall have the right to stay the execution sixty days. And all judgments obtained in a justice court, where the amount is thirty dollars or under, the stay of execution shall be the same time as now prescribed by law.—[*See next Act.*] Notes, ac-  
counts, etc.,  
not exceeding  
fifty dollars.  
  
Stay of Exe-  
cution, *sixty*  
days, demand  
being over  
\$30.

SEC. III. [Repeals conflicting laws.]

AN ACT to amend the second section of an Act "to raise the Jurisdiction of the Justices of the Peace," approved March 5th, 1856.—*Approved Dec. 22, 1857.*

83. SEC. I. That from and after the passage of this act, when any person shall be sued in a justices' court, and a judgment obtained against the party defendant, the defendant, within four days after the adjournment of said court, upon paying all cost that may have accrued, and giving good and sufficient security for principal and interest involved in the case, shall have the right to stay the execution sixty days. Execut'n may  
be stayed  
sixty days.

SEC. II. [Repeals conflicting laws.]

NOTE.—By the Act of 1811, the defendant was allowed to stay the issuing of execution for *forty* days, if no appeal was entered; but if an appeal was entered, after the appeal trial, a stay of only *twenty* days was allowed. The foregoing statute changes the time of say on all judgments obtained in justices' courts, to sixty days.



AN ACT to authorize the Justices of the Peace in any Militia District in this State, to adjourn their courts from day to day; or to hold Court two or more days in each Month, whenever the business of any of their Courts requires it.—*Approved Dec. 10, 1858.*

Justices' C'ts  
may be held  
on several  
days.

84. SEC. I. That it shall and may be lawful for [*the justices of*] any justices' courts in this State, to hold court in their respective districts, two or more days in each month, whenever the business of said court requires the same. And that the constables' sales shall be on the first day of each court.

SEC. II. [Repeals conflicting laws.]

AN ACT to amend an act "to change and simplify the Practice and Pleading in this State," approved February 20th, 1854.—*Approved Dec. 10, 1858.*

Pleadings may  
be amended,  
etc.

85. SEC. I. That from and after the passage of this act, the provisions of the above-recited act, so far as relates to the amending of pleading, at any stage of the proceedings, shall be extended to the justices' courts of this State; and that the amendments to pleadings in justices courts of this State, shall be allowed in the same manner as is now allowed in the superior courts.—[*For the original act, see Judiciary.*]

SEC. II. [Repeals conflicting laws.]

NOTE.—Although Justices of the Peace have no *general* jurisdiction to try cases for Trespass or Damage, yet *special* authority is given them, in some such cases, particularly as respects Rail-roads—see, particularly, the Act of 1854; pamp. pp. 93, 94, 95.

### *Summons in Justices' Court, (against Trustee of Married Woman.)*

STATE OF GEORGIA, { *John Doe against Richard Roe.*—Case in Justices'  
Houston County. } Court, 619th District, G. M.

*To any lawful Officer to execute and return.*

*Richard Roe*, of said District and County, Trustee of *Mrs. Ann Sykes*, a married woman.—You are hereby required to be and appear at the Justices' Court, to be held in and for said District and County, on the *first Saturday in June next*, at the Court-House in said District, by ten o'clock in the forenoon, then and there to Answer the complaint of *John Doe*, in an action on an *Account* against you, as Trustee as aforesaid, (a copy of which Account is hereunto annexed,) for supplies furnished for the use of the *Plantation* of said *Mrs. Ann Sykes*, amounting to the sum of *forty* dollars, for the year eighteen hundred and *fifty-eight*. As in default hereof, the Court will proceed as to justice shall appertain.

*Given under my hand and official signature, this May 1, 1859.*

JAMES MACK, J. P.

### *Copy of the Account.*

1859.

Jan'y 1.

*Richard Roe*, Trustee for *Mrs. Ann Sykes*, to  
*John Doe*

30 bushels Corn a \$1 per bushel	Dr.	\$30 00
1,000 lbs. Fodder, a \$1 per hundred lbs.		10 00

Whole amount	\$40 00
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JOHN DOE.

NOTE.—The Judgment and Execution must follow the particularity of the Summons. The Officer must levy on a sufficiency of the Trust-Estate to satisfy the debt. The Constable must advertise as in other cases.

## CHAPTER III.

## ATTACHMENT AND GARNISHMENT.

AN ACT to authorize the issuing of Attachments and Garnishments, and to regulate proceedings in relation to the same; and for other purposes.  
—*Approved March 4, 1856.*

1. SEC. I. *Be it enacted*, That process of attachment may issue in the following cases—

1st. When the debtor resides out of this State.

2d. When he is actually removing, or about to remove without the limits of any county. In what cases Attachment may issue

3rd. When he absconds.

4th. When he conceals himself.

5th. When he resists a legal arrest.

6th. When he is causing his property to be removed beyond the limits of this State.

2. SEC. II. Before process of attachment shall issue, the party seeking the same, his agent or attorney-at-law, shall make an affidavit before some judge of the superior court; justice of the inferior court; justice of the peace, or notary public, that the debtor has placed himself in some one of the positions enumerated in this act; and also of the amount of the debt claimed to be due. When the affidavit is made by the attorney-at-law, or agent of the party, he may swear that the amount claimed to be due, is due according to the best of his knowledge and belief. Pl'ff, his Agent or Attorney-at-Law, to make affidavit.  
How Att'y at Law and Agent may swear.

3. SEC. III. The party seeking the attachment, before the same issues, shall also give bond with good security, in an amount at least double the debt sworn to, payable to the defendant in attachment, conditioned to pay such defendant all damages that he may sustain, and also all costs that may be incurred by him, in consequence of suing out the attachment; in the event that the plaintiff shall fail to recover in said case; which bond it shall be the duty of the magistrate before whom the affidavit is made, to take; and where the affidavit is made by the agent or attorney-at-law of the plaintiff, such agent or attorney-at-law is hereby authorized to sign the name of the principal to the bond, who shall be bound thereby, in the same manner as though he had signed it himself. Plaintiff, his Agent or Attorney-at-Law, to give Bond.  
Agent or Attorney-at-Law may execute Bond for principal.

4. SEC. IV. Where the debt, for the recovery of which the attachment is sought, is due to a co-partnership, or is due to several persons jointly, it shall be lawful for any one of the co-partners, or joint creditors, his agent or attorney-at-law, to make the affidavit, and give the bond as prescribed by this act, and to sign the name of the other co-partners or joint creditors, to said bond; and they shall be bound thereby, in the same manner as though they had signed it themselves. Co-partner, his Agent or Attorney-at-Law, may sign the name of the other co-partners, or joint creditors.

5. SEC. V. Affidavit being thus made, and bond given, it shall be the duty of the magistrate before whom such affidavit is made and bond given, or any other magistrate as aforesaid, or notary public, to issue an attachment against the defendant, which may be levied upon the properties of Attachment on what to be levied.



the defendant, both real and personal, which may be found in this State.—  
[*And see 75 and 76.*]

6. SEC. VI. When the amount sworn to shall exceed the sum of thirty  
[*fifty, see 74,*] dollars, the attachment shall be made returnable to the  
superior or inferior court of the county where the defendant resides, or  
where he last resided. And when the debt sworn to does not exceed the  
sum of thirty [*fifty*] dollars, the attachment shall be made returnable to  
the justices' court of the district in the county where the debtor resides,  
or where he last resided; except when the defendant resides out of the  
State; then and in that case, if the debt sworn to exceed the sum of  
thirty dollars, the attachment may be returned to the superior or inferior  
courts of any county in the State. And where the debt does not exceed  
the sum of thirty [*fifty*] dollars, the attachment may be returned to any  
justices' court of any district of any county, in this State.—[*Justices'*  
*jurisdiction increased to fifty dollars; see 74.*]

7. SEC. VII. Attachments returnable to the superior or inferior courts,  
shall be directed to all and singular, the sheriffs and constables of this  
State, and attachments returnable to the justices' courts shall be directed to  
all and singular, the constables of this State. And it shall be lawful for  
any one of the officers to whom the same are directed, as aforesaid, to  
levy the same upon the property of the defendant, that may be found in  
the county of which he is sheriff or constable. And when an attachment  
shall come into the hands of any officer of the county, in which such  
attachment is returnable, and the defendant shall have removed his prop-  
erty beyond the limits of said county, before such attachment is executed,  
it shall be lawful for the officers having such attachment, to follow such  
property into any county in this State, and to levy the same and bring  
back the property into the county where the attachment is returnable.

8. SEC. VIII. Said attachment shall be made returnable to the next  
superior, inferior or justices' courts, as aforesaid: *Provided*, the term of  
said court does not commence within twenty-days next after the suing  
out of said attachment; and in such event, said attachment shall be made  
returnable to the next superior, inferior, or justices' court thereafter.—  
[*But see 73.*]

9. SEC. IX. It shall be the duty of the officer levying such attachment,  
to return the same, with his actings and doings entered thereon, together  
with the affidavit and bond, to the court to which the same is made re-  
turnable.

10. SEC. X. Where the plaintiff in attachment wishes to levy his attach-  
ment upon property in a different county from that in which the same is  
returnable, it shall be the duty of the magistrate or notary public, issuing such  
attachment upon the request of the plaintiff, his agent or attorney-at-law, to  
make out a copy or copies of the original attachment, bond and affidavit, and  
certify the same officially, to be a true copy or copies, and upon such copies  
being delivered to any officer to whom the same is directed, of the county  
where the property of the defendant is, it shall be the duty of such officer to  
levy forthwith, the same upon the property of the defendant in such county,  
and to return the same with his actings and doings entered thereon, to the  
courts to which the original attachment is returnable.

11. SEC. XI. When such attachment has been levied upon the property of  
the defendant, it shall be the duty of the officer levying the same, to deliver  
the property so levied on to the defendant, upon his giving bond with good  
security, payable to the plaintiff in attachment, obligating themselves to pay  
the plaintiff the amount of the judgment and costs that he may recover in said  
case; in case the property levied upon shall be equal to or exceed the amount



of the debt sworn to be due; and in double the amount of the debt claimed to be due where the property shall [not] exceed the value of the debt claimed to be due. Which said bond the officer taking the same, shall return with said attachment to the court to which the same is made returnable; and it shall be lawful for the plaintiff to enter up judgment against the defendant and securities upon said bond, for the amount of the judgment that he may recover in his said attachment case, in the same manner that now by law judgment may be entered up in case of security upon appeals.

12. SEC. XII. When the defendant does not give security, as provided in the previous section, and the property remains in the hands of the levying officer, and is of a perishable nature, or liable to deteriorate in value from keeping, or there is expense attendant upon keeping the same, upon these facts being made plainly to appear to a judge of the superior court, or two justices of the inferior court of the county in which the attachment is returnable, where the same is returnable to the superior or inferior court; or to a justice of the peace, of the county where the same is returnable to a justice's court, it shall be their duty to order a sale of such property, which shall be at the usual place of holding sheriffs' sales, of the county where such property may be, when the attachment is returnable to the superior or inferior court; and when the attachment is returnable to a justices' court, at the usual place of constables' sales of the district where the property may be, or at such other place where the magistrates ordering such sales may direct. The times and place of holding such sales shall be advertised at the court-house door, and two other public places in the county where the sale is to take place, at least ten days before said sale takes place. And when the attachment is returnable to a justice's court, it shall be advertised, instead of at the court-house door of the county, at the court-house door of the district in which the attachment is returnable; and the money arising from such sales shall be held by the officer making the same, subject to the order of the court to which the attachment is returnable.

Perishable property unplevied may be sold by order.

How advertised and sold.

Disposition of the money.

13. SEC. XIII. In all cases where attachment may issue, it shall be the duty of the magistrate or notary public issuing the same, at the request of the plaintiff, his agent or attorney-at-law, to issue summons of garnishment, directed to any person who may be indebted to, or have property or effects of the defendant in their hands, requiring them to appear at the court to which the attachment is made returnable, then and there to depose on oath, what they were indebted to the defendant at the time of the service of said garnishment, or what property or effects of his, they have in their hands, or had at the time of the service of said summons of garnishment, and it shall be the duty of the officer levying such attachment, to serve such summons of garnishment.

Summons of Garnishment to issue. Service of the same.

14. SEC. XIV. When the plaintiff, his agent or attorney-at-law, shall desire to garnishee persons not residing in the county in which the attachment issues, it shall be the duty of the magistrate or notary public issuing the same, at the request of the plaintiff, his agent or attorney-at-law, to make out a copy of the affidavit, bond and attachment, and certify the same officially to be a true copy, and upon the delivery of such copy to any magistrate or notary public, who is authorized to issue an attachment by the provisions of this act, of the county in which the person sought to be garnisheed resides, it shall be the duty of such magistrate or notary public, to make out a summons of garnishment for such persons as he may be requested to do by the plaintiff, his agent or attorney-at-law, requiring such persons to appear at the next superior, inferior or justices' court of said county, according as the original attachment is returnable, to a superior, inferior or a justices' court of the county in which it issued, and depose in the manner prescribed by the provisions of this act. But if the next court as aforesaid, shall be holden within

Non-resident Garnishee how to be examined.



less than ten days next after the issuing of said summons, then the persons garnisheed shall be required to appear and depose at the next court held thereafter. Which said summons may be served by any officer authorized to levy an attachment by the provisions of this act. It shall be the duty of the officer serving such summons of garnishment, to return such certified copy of affidavit, bond and attachment, to the court as aforesaid, together with his actings and doings endorsed thereon.

**Officer's duty.** 15. SEC. XV. When any person summoned as garnishee fails to appear in obedience to the summons, and answer at the term of the court at which he is required to appear, the case shall stand continued until the next term of the court, and if he shall fail to appear and answer by the next term of the court, the plaintiff in attachment may, on motion, have judgment against him for the amount of the judgment he may have obtained against the defendant in attachment, or for so much thereof as shall remain unpaid at the time judgment is rendered against the garnishee; and it shall be lawful for the court to continue the case against the garnishee until final judgment is rendered against the defendant in attachment.

**Garnishee failing to answer, the case to be continued.** Judgment against Garnishee. Court may continue case. Judgment against Garnishee. 16. SEC. XVI. Where the garnishee appears and answers that he is indebted, or has property or effects in his hands belonging to the defendant in attachment, judgment shall be rendered against him in favor of the plaintiff for such acknowledged indebtedness, and the property and effects whatever they may be, shall be delivered into the hands of the sheriff or constable, as the case may be, and by order of the court shall be by him sold, and the money arising from such sale, shall be held subject to the order of the court. And in case the garnishee fails to deliver over such property or effects to the officer as aforesaid, it shall be lawful for the court to attach him as for contempt. The property and effects so surrendered and delivered into the hands of the officer as aforesaid, shall be sold at such time and place, and after such notice given as the court ordering the same, shall direct.

**Property returned to be sold.** Disposition of the money. Garnishee refusing to deliver property. Property to be sold. Garnishee's answer traversable. How tried. Appeal allowed. What may be shown on the trial of appeal. Verdict. Judgment. Execution. 17. SEC. XVII. Where the plaintiff in attachment is not content with the answer of the garnishee, he may, at the term of the court to which the same is made, traverse the same, and the issue formed upon this traverse, shall be tried at the same term, unless cause is shown for a continuance; which issue shall be tried by a petit jury, and either party being dissatisfied with the finding of said jury may appeal, as in cases at common-law; and the same shall be tried and governed by the same rules and regulations as in other appeal cases. On the trial of said issue, it shall be competent for the plaintiff to show the amount of the indebtedness of the garnishee, and the value of the property and effects of the defendant that he has in his hands, or had at the time of the service of said garnishment, and which he has not surrendered, as aforesaid. And the verdict of the jury shall be the amount of the indebtedness, and for the value of the property and effects, not surrendered as aforesaid. And upon final judgment being rendered against said garnishee, the plaintiff in attachment shall have execution for the amount of such judgment and costs, as at common-law.

18. SEC. XVIII. Where the summons of garnishment is returnable to a justices' court, the issue formed upon the traverse, as aforesaid, shall be tried by a jury, in the same manner as appeal cases in justices' courts.

**Case in Justices' Courts.** 19. SEC. XIX. In all cases it shall be the duty of the officer levying the attachment, to levy them in the order, and at the time, in which they came into his hands. And it shall be his duty to enter upon the same, the year, month, day of the month, and hour of the day, on which he made the levy.



20. SEC. XX. When the attachment has been returned to the court to which the same is returnable, the subsequent proceedings shall be, in all respects, the same as in cases at common-law, where there is personal service. And where the attachment is returnable to the superior and inferior courts, the plaintiff shall file his declaration, at the first term.

Subsequent proceedings.

21. SEC. XXI. It shall be lawful for the defendant to appear by himself, or his attorney-at-law, and make his defence, at any time before final judgment is rendered against him. And either party being dissatisfied with the verdict that may be rendered in the case, may enter an appeal as in cases where there is personal service, and which shall be proceeded in and tried, in all respects, as in cases at common-law, or where there is personal service.

Defence.

Appeal, proceedings upon.

22. SEC. XXII. It shall be lawful for the plaintiff, his agent or attorney-at-law, at any time within ten days before final judgment on the attachment, to give notice to the defendant of the pendency of such attachment, and of the proceedings thereon, which notice shall be served personally on the defendant, by the sheriff of the county to which said attachment is returnable, or any constable of said county, by giving him a copy of said notice, and returning the original, with his service thereon, to the court in which said attachment is pending, which being done the judgment rendered upon such attachment, shall bind all the property of the defendant, and shall have the same force and effect as judgments rendered at common-law.

Notice of Plaintiff to Defendant, consequence. Notice how and by whom served. Extent of judgment.

23. SEC. XXIII. Attachment may issue and be levied on Sunday, when the plaintiff, his agent or attorney-at-law, shall swear, in addition to the oath prescribed by this act, that he has reason to apprehend the loss of the debt, unless process of attachment do issue on Sunday; and shall also comply with the other provisions of this act; in relation to issuing attachments.

What to be done when Attachment is required to be issued on Sunday.

24. SEC. XXIV. Where the plaintiff in attachment desires the testimony of a witness who resides out of the county in which the attachment issues, he shall make out interrogatories and file them in the clerk's office or court, in the same manner as where suit is proceeding by personal service, and a copy of such interrogatories, together with a notice that they are filed, shall be posted up at the court-house door where the suit is pending, for ten days; and upon affidavit of that fact being made and filed in said case, by the plaintiff, his agent or attorney-at-law, it shall be the duty of the clerk or justice of the peace, as the case may be, to annex a commission to such interrogatories, and the same shall be executed and returned as in cases at common-law, or where there is personal service. But if the plaintiff [*defendant*] appears by himself, or attorney-at-law, and defends the case, interrogatories shall be served in the same manner as at common-law. [*See Judiciary, title Testimony.*]

Interrogatories may be filed.

How served.

Clerk's or Justice's duty.

25. SEC. XXV. Where the debt is not due, the debtor shall be subject to attachment, in the same manner, and to the same extent as in cases where the debt is due; except that where the debt does not become due before final judgment, execution upon the judgment shall be stayed until the debt is due.

Debt not due, execution to be stayed.

26. SEC. XXVI. In cases of joint-contractors and co-partners, where any one of them shall render himself liable to attachment, agreeably to the provisions of the first section of this act, attachment may issue against him upon complying with the previous provisions of this act, in relation to the same; and proceedings against such joint-contractor or co-partner, shall be in all respects as in other cases of attachment; except that such

Proceedings against joint-contractor or co-partner.



attachment shall be levied only upon the separate properties of such joint-contractor or co-partner.

27. SEC. XXVII. In all cases where a person is a security or endorser upon any instrument in writing, and the principal shall become subject to attachment, according to the provisions of the first section of this act, it shall be lawful for such security or endorser, upon complying with the provisions of this act, in relation to the issuing of attachments, to have attachment against his principal; and the proceedings on the same shall be in all respects the same as in other cases of attachment, according to the provisions of this act. And the money raised by such attachment shall be paid to the person holding such instrument in writing. But if the security or endorser has paid the debt, then the money raised upon such attachment, or so much thereof as will pay the amount the security or endorser has paid, shall be paid to such security or endorser; and in case the debt is not due at the time judgment is rendered against the principal, execution shall be stayed until the debt is due.

28. SEC. XXVIII. In all cases where the plaintiff has commenced suit for the recovery of his debt, and the defendant, during the pendency of such suit, shall become subject to attachment, agreeably to the first section of this act, the plaintiff upon complying with the provisions of this act, in relation to the issuing of attachments, may have an attachment against the defendant; and all the proceedings in relation to the same, shall be as herein-before prescribed, in relation to attachments where no suit is pending. And a satisfaction of the judgment in the common-law action, shall satisfy the judgment in attachment, and a satisfaction of the judgment in attachment shall satisfy the judgment in the common-law action.

29. SEC. XXIX. In all cases of sale of lands, where the vendor has not executed a deed of conveyance to the purchaser for the same, but has given bond for titles, or other evidence of the contract, and the purchase money has not been paid, and the vendee shall become liable to attachment, agreeably to the provisions of the first section of this act, attachment may issue against him at the instance of the vendor, upon complying with the provisions of this act, in relation to attachments; which said attachment shall be levied upon the land described in the bond, or other evidence of contract for titles. And the subsequent proceedings shall be in all respects as is heretofore prescribed in this act, in relation to attachments. And it shall be lawful for the party bound by such bond, or other contract for titles, to file in the clerk's office of the superior court of the county where the land is situated, a good and sufficient deed of conveyance of said land to the obligee of said bond, or other contract for titles; and when judgment is obtained upon said attachment, the execution issuing thereon may be levied upon said land, and the same be sold, and the money arising from such sale shall be appropriated to the payment of said judgment on the attachment, to the exclusion of any other attachment, judgment or other debt, of the defendant.

30. SEC. XXX. In case either plaintiff or defendant in attachment shall die before final judgment is rendered in any case, and there is representation upon the estate of the defendant, parties shall be made in the same manner as in cases at common-law, or where there is personal service. But if there is no known representation upon the estate of the defendant, within this State, and the plaintiff in attachment shall die, his executor or administrator may at any time, after his qualification as such, cause to be issued by the clerk of the court, or justice of the peace, a *scire facias*, returnable to the next term of the court after the issuing of the same; giving notice to the opposite party of his intention to be made a party in place of the deceased testator or intestate, which shall be posted



up at the door of the court-house where such attachment is pending, at least twenty days before the term at which such *scire facias* is made returnable. And upon affidavit being made by the executor or administrator of this being done, and said affidavit being filed among the papers in the case, said executor or administrator shall, on motion, be made a party, and the cause proceed in his name. When the defendant shall die, *scire facias* shall issue in the manner aforesaid, after the expiration of twelve months from the defendant's death, directed to the representative upon the estate of the deceased defendant, notifying him of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same; which being posted as aforesaid, and affidavit made and filed as aforesaid, it shall be lawful for the plaintiff to proceed in the same manner as though the death of the defendant had not occurred; but the executor or administrator upon the estate of the defendant may at any time before final judgment upon the attachment, come in and be made a party, and defend in the same manner as his testator or intestate might have done.

How served.

In case of the death of the Defendant.

Representative may be made a party.

31. SEC. XXXI. It shall be lawful for the defendant in attachment, in all cases, to traverse the truth of the affidavit in relation to the ground upon which the attachment has issued, at the return term of the attachment; and the issue formed upon such traverse, shall be tried by a jury at the same term, unless good cause is shown for a continuance. And either party being dissatisfied with the verdict of the jury, may enter an appeal, which shall be governed, in all respects, by the same rules and regulations as other appeal cases. And if the final verdict upon said issue shall be in favor of the defendant, said attachment shall be dismissed at the cost of the plaintiff.

Plaintiff's Affidavit may be traversed; how.

Appeal allowed by either party.

32. SEC. XXXII. Service of the attachment, by serving process of garnishment, shall be as effectual for all purposes, as though the attachment had been served by levying the same upon the property of the defendant.

Service of Garnishment the same as service of Attachment. Attachment against foreign incorporation. Replevy.

33. SEC. XXXIII. Attachment may issue against incorporations not incorporated by the laws of this State, but transacting business within this State, under the same rules and regulations as are by this act prescribed in relation to other cases. And it shall be lawful for any agent of such corporation to relieve the property levied on, or discharge the summons of garnishment that may be issued, by giving bond to the levying officer, payable to the plaintiff, conditioned to pay the amount that may be recovered in said case; which bond the levying officer shall return to the court to which the attachment is made returnable. And judgment shall be entered up against the principal and security upon said bond, for the amount the plaintiff may recover against such corporation, in the same manner that judgment is now by law entered up against securities upon appeal.

Judgment on Replevy Bond.

34. SEC. XXXIV. Where property shall be levied on by virtue of any attachment, and the same is claimed by any person not a party to such attachment, it shall be the duty of the person claiming the same, his agent or attorney-at-law, to make oath before some person authorized by law to administer an oath, that the property levied on is the property of the claimant, according to the best of his knowledge and belief, and that the same is not subject to said attachment. And said claimant shall give bond with good security, payable to the plaintiff in attachment, in a sum double the value of the property claimed, to be judged of by the levying officer; conditioned to pay the plaintiff all damages which the jury, on the trial of the right of property, may assess against him, in case it should be made to appear that such claim was made for the purpose of delay. And in case the claim is interposed by the agent or attorney-at-law of the claimant, such agent or attorney-at-law, shall have power to sign the name of the claimant to the bond; and the said claimant shall be bound in the same manner as though he had signed it himself. It

Cl'm allowed.

Oath of Claimant.

Bond must be given.



- Duty of Levy- shall be the duty of the officer taking such affidavit and bond, to return the  
ing Officer in same to the court to which the attachment is returnable, unless the property  
returning levied on should be real estate, in which case it shall be his duty to return the  
claim. same to the superior court of the county where the land lies. And in case the  
attachment is returnable to the justices' court, and is levied upon slaves, it  
shall be the duty of the officer to return the affidavit and bond to the next  
superior [*or inferior*] court of the county in which the attachment issued.
- Claim, how 35. SEC. XXXV. When the claim is thus returned, if returned to the  
tried. superior or inferior court, it shall be tried in the same manner and subject to  
the same rules and regulations as are prescribed by law for the trial of claims  
in those courts where the property is levied on by virtue of executions at com-  
mon law. And when the claim is returned to a justices' court, it shall be tried  
in the same manner and subject to the same rules and regulations as are by  
law prescribed for the trial of appeal cases in justices' courts.
- Claimant may 36. SEC. XXXVI. When property levied on shall be claimed as aforesaid, it  
execute forth- shall be lawful for the person claiming such property, his agent or attorney-at-  
coming Bond. law, to execute a bond with good security, payable to the plaintiff in attach-  
ment, in a sum double the value of the property claimed, the value to be  
judged of by the levying officer; conditioned to deliver such property at the  
time and place of sale: *Provided*, the same should be found subject to the  
attachment. And upon the delivery of such bond to the levying officer it shall  
be his duty to deliver such property to the claimant, his agent or attorney-at-  
law. And it shall be the duty of the levying officer to return such bond,  
together with the affidavit and claim bond, to the court to which such attach-  
ment is returnable. And when said claim is interposed by the agent or attor-  
ney-at-law of the claimant, such agent or attorney-at-law of the claimant, shall  
have power to sign the name of the claimant to the bond, who shall be bound  
thereby, in the same manner as though he had signed it himself.
- Officer must 37. SEC. XXXVII. Upon the failure of the claimant to deliver said  
return forth- property, according to the conditions of said bond, the plaintiff may imme-  
coming Bond. diately sue the claimant and security upon said bond; and it shall be lawful  
for him to recover in said suit, the full value of the property claimed, and  
also, all damages, costs and charges that the plaintiff may have sustained, in  
consequence of the failure of the claimant to deliver said property.
- Suit on forth- 38. SEC. XXXVIII. In cases where the claimant shall deliver the property,  
coming Bond. and upon selling the same, a sufficient amount shall not be raised to pay the  
debt and cost of the plaintiff, it shall be lawful for the plaintiff to institute suit  
against the claimant and his securities upon his said delivery bond, and to  
recover the full value of the hire, or use of the property while the same has  
been in the possession of the claimant; and also, full damages for any deterior-  
ation of the value of the property, by use or otherwise, while the same has  
been in possession of the claimant: *Provided*, such amount of recovery shall  
not exceed the amount of debt that may remain due from the defendant in  
attachment to the plaintiff.
- Plaintiff may 39. SEC. XXXIX. When the defendant has given security according  
sue for hire, and upon selling the same, a sufficient amount shall not be raised to pay the  
etc. debt and cost of the plaintiff, it shall be lawful for the plaintiff to institute suit  
against the claimant and his securities upon his said delivery bond, and to  
recover the full value of the hire, or use of the property while the same has  
been in the possession of the claimant; and also, full damages for any deterior-  
ation of the value of the property, by use or otherwise, while the same has  
been in possession of the claimant: *Provided*, such amount of recovery shall  
not exceed the amount of debt that may remain due from the defendant in  
attachment to the plaintiff.
- How Plaintiff 40. SEC. XL. After the judgment has been obtained in any case of
- may recover of Claimant.
- When Judg- ment binds all defend- ant's property.
- Execution how levied. Judgment how entered up.



attachment, execution shall issue as in cases at common-law, and the execution shall be levied in the same manner as executions issuing at common-law; and the proceedings, in all respects, shall be the same, except that when the judgment only binds the property levied on by the attachment, as aforesaid, the execution shall be issued against such property only, and that property only shall be levied on and sold. Judgment, execution, levy, sale, &c.

41. SEC. XLI. All moneys raised by the sale of defendant's property, or otherwise, by virtue of the provisions of this act, shall be paid over to the creditors of the defendant, according to the priority now established by law; saving only, that as between attaching creditors, the attachment first levied shall be first satisfied, to the entire exclusion of any attachment of younger levy. Money how paid out.

42. SEC. XLII. In all cases of attachment, the form of the affidavit, bond and attachment may be as follows:—[*See first, second, and third Forms.*]

43. SEC. XLIII. It shall be lawful to fill up the blanks in each of the forms aforesaid, according to the circumstances of each particular case, and no attachment shall be void in consequence of a failure to comply with the forms aforesaid: *Provided*, the provisions of this statute are substantially complied with. And when attachments are returnable to justices' courts, they shall be directed to all and singular, the constables of this State. When Attachment not void. How directed in Justice's Courts.

44. SEC. XLIV. In cases where suit is now pending, or may be hereafter commenced, or where judgment has been obtained, the plaintiff shall be entitled to process of garnishment, under the following rules and regulations:— Garnishment at common law.

45. SEC. XLV. In order to obtain such process, the plaintiff, his agent or attorney-at-law, when suit is pending, shall make an affidavit of the amount claimed to be due, before some magistrate authorized to issue an attachment by the terms of this act. And when judgment has been obtained, of the amount due upon such judgment. And shall further swear that he has reason to apprehend the loss of the same, or some part thereof, unless such process issue. And when the affidavit is made by the agent or attorney at law, he may swear that the amount claimed to be due, is due according to the best of his knowledge and belief. The plaintiff shall also give bond and good security, in a sum at least equal to double the amount sworn to, payable to the defendant in the suit, or judgment, as the case may be; conditioned to pay to said defendant, all costs and damages that he may sustain in consequence of suing out said garnishment, in the event that the plaintiff shall fail to recover in the case where suit is pending. And where judgment has been obtained, in the event that it shall be made to appear that the amount sworn to be due on such judgment, is not due. And when such affidavit [*bond*] shall be made by the agent or attorney-at-law, of the plaintiff, such agent or attorney-at-law shall have power to sign the name of the plaintiff to such bond, who shall be bound thereby in the same manner as though he had signed it himself. Garnishment how obtain'd. Affidavit. Bond to be given. Agent or Attorney-at-law.

46. SEC. XLVI. When such affidavit has been made and bond given, it shall be the duty of the magistrate taking the same, upon the request of the plaintiff, his agent or attorney-at-law, to issue summons of garnishment to such person as he may be requested to do, as aforesaid; requiring him to appear at the next term of the court where such suit is pending, or where such judgment has been obtained: *Provided*, such court shall sit within not less than twenty days after such summons shall issue; and if it shall sit within that time, then to the next court thereafter; then and there to depose, on oath, what he was indebted to the defendant at the Magistrate must issue summons. When returnable. Garnashee's answer.



Return of the  
officer.

time of the service of such process of garnishment, or what property or effects he has in his hands belonging to the defendant, or had at the time of the service of the summons of garnishment. And upon such affidavit, bond and summons of garnishment being delivered into the hands of any officer authorized by this act to levy an attachment, it shall be his duty to serve such summons of garnishment upon the person to whom it is directed, and to make an entry of such service, and of his actings and doings in the premises, upon the affidavit and bond, and return the same to the court to which the person summoned as garnishee is required to appear. And all subsequent proceedings shall be the same as before prescribed in this act, in relation to garnishment, in cases of attachment.—[*But see 73.*]

Non-resident  
Garnishee  
how served.

47. SEC. XLVII. Where any of the persons sought to be garnisheed reside in a different county from the one where judgment has been obtained, or where suit is pending, it shall be the duty of the magistrate or notary-public taking such affidavit and bond, to make out a copy of the same, and shall officially certify the same to be a true copy, and shall deliver such certified copy to the plaintiff, his agent or attorney-at-law, and upon such certified copy being delivered to any magistrate or notary-public of the county where the person sought to be garnisheed resides, who is authorized by this act to issue an attachment, it shall be the duty of such magistrate to issue summons of garnishment for such person as he may be requested to do, by the plaintiff, his agent or attorney-at-law, requiring him to appear at the next superior, inferior or justices' court of said county, according as such suit is pending or judgment has been obtained, in the superior, inferior or justices' courts; then and there to depose, according to the previous section of this act. But if the next court shall be held within less than twenty days from the time such garnishment issues, said summons of garnishment shall require the person to appear at the next court thereafter.

Must attend  
and Answer.

At what time.

Officers must  
serve copy  
and make re-  
turn.

48. SEC. XLVIII. That upon such certified copy of affidavit, bond and summons of garnishment being delivered to any officer authorized by this act to levy an attachment, it shall be his duty to serve the same upon the person to whom it is directed, and return said copy, affidavit and bond to the court where such person is summoned to appear, together with his actings and doings thereon. And all subsequent proceedings shall be the same as is prescribed by this act, in relation to garnishment in cases of attachment, where the garnishee resides out of the county in which the attachment is returnable.

How Defend-  
aut may dis-  
solve Garnish-  
ment.

49. SEC. XLIX. That in cases where garnishments are issued, where suit is pending, it shall be lawful for the defendant to dissolve such garnishment, and have the same dismissed, upon his filing in the clerk's office of the court where the suit is pending in the superior or inferior court, or with the justice of the peace, where suit is pending in such court, a bond with good security, payable to the plaintiff, for the payment of the judgment and costs in said case.

Judgment on  
Garnishee's  
Bond, how en-  
tered up.

Moneys how  
paid out.

And it shall be lawful for the plaintiff to enter up judgment upon such bond, against the principal and securities, in the same manner as now by law, judgment may be entered up against securities upon appeal.

50. SEC. L. That all moneys raised by virtue of process of garnishment, under this act, shall be paid over to the creditors of the defendant, according to the priorities now established by law.

Number and  
gender.

51. SEC. LI. *And be it further enacted*, That in all cases where the singular number is used in this act, the plural number shall be included, where such number is applicable to the case. In all cases where the masculine gender is used, the feminine gender shall be included, when the same is applicable to the case.

Oath of Ju-  
ries.

52. SEC. LII. That upon the trial of all issues arising under this act, to be tried by a petit jury, the oath administered to the jury, shall be the same



as at common-law. And in cases upon appeal, the oath shall be the same as is now administered to special juries in appeal cases. And in claim cases, the same oath that is now required to be administered in claim cases. And the damages to be given in appeal and claim cases, arising under this act, shall be the same as is now prescribed by law, in appeal and claim cases.

Damages.

53. SEC. LIII. That plaintiff in attachment shall have the right to amend his attachment, or bond, or declaration, as in other cases at common-law. And that the levying-officer of the same shall have the right to amend his return, by supplying any omissions or errors. And the court before which the attachment shall be returned, shall have power to order or allow said amendments.

Amendments allowed.

54. SEC. LIV. That where a person who has been defendant in attachment, desires to sue the plaintiff in attachment, to recover damages; and the plaintiff shall not reside in this State, it shall be sufficient to serve a copy of the petition and process on the security to the bond given by the plaintiff.

Non-resident Plaintiff in Attachment how sued by defendant.

55. SEC. LV. That all acts and parts of acts upon the subject of attachments and garnishments, be and the same are hereby repealed.

Repealing section.

56. SEC. LVI. That this act shall take effect and be of force, from and after the first day of June next.

When this act to take effect.

AN ACT authorizing Attachments to issue in cases sounding in Damages.—

*Approved Dec. 21, 1857.*

57. SEC. I. That from and after the passage of this act, in all cases of money demands, whether arising *ex contractu*, or *ex delicto*, plaintiffs shall have the right to sue out attachment, when defendant shall have placed himself in such situation as will authorize plaintiffs to sue out attachment; upon the plaintiff's complying with the statutes now of force, in relation to issuing attachments.

Attachment may issue for Damages.

AN ACT to point out the mode and manner of obtaining Judgments on Declarations in cases of Attachments in the Superior and Inferior Courts of this State, and to give said Judgments lien, as in cases at common-law.—

*Approved Dec. 21, 1857.*

58. SEC. I. That from and after the passage of this act, when plaintiffs shall have filed their declarations, in conformity with the 20th section of an act approved March the 4th, 1856, entitled "an act to authorize the issuing of attachments and garnishments, and to regulate proceedings in relation to the same, and for other purposes therein mentioned," and notice shall have been given, (in conformity with the 22d section of said act,) no declaration shall be dismissed because the attachment may have been dismissed or discontinued; but plaintiffs shall be entitled to judgments on the declaration, as in other cases at common-law, upon the merits of the case.

Declarations in Attachments not to be dismissed because the Attachment is dismissed or discontinued.

59. SEC. II. That when judgments shall be obtained, in conformity with this act, they shall be of equal dignity with, and shall have the same lien that judgments obtained at common-law do.

60. SEC. III. That no traverse of the plaintiff's attachment, affidavit, or other proceedings of the attachment, shall delay judgment on the declaration; but judgment may be had on the declaration, subject to the rules of common-law, as well before the trial of the issue made on the attachment proceedings, as afterwards.

No traverse to delay Judgment on the Declaration.

61. SEC. IV. That nothing in this act shall affect the lien of attachments, as provided for now by law.

Lien not affected.

SEC. V. [Repeals conflicting laws.]

AN ACT to amend the Attachment Laws of this State.—*Approved Dec. 22, 1857.*



Attachment may issue against Executor or Administrator. 62. SEC. I. That process of attachment may issue when the administrator on an estate, or the executor of the last will and testament of any deceased person, shall be actually removing, or about to remove, without the limits of any county of this State, the property of said deceased person: *Provided*, final judgment shall not be entered up against said administrator or executor, until after the expiration of two years from the date of grant of letters of administration, or letters testamentary, as the case may be.

AN ACT to extend an act, approved March 4th, 1856, entitled "an act to authorize the issuing of Attachment and Garnishment, and to regulate proceedings in relation to the same, and for other purposes therein mentioned," and to amend said act; and for other purposes therein mentioned.—  
*Approved Dec. 22, 1857.*

Act of 1856, extended to City Courts. 63. SEC. I. The provisions of the act approved March 4th, 1856, entitled "an act to authorize the issuing of attachments and garnishments, and to regulate proceedings in the same, and for other purposes therein mentioned," are hereby extended to all courts established in incorporated cities, in this State, which are courts of record, exercising civil common-law jurisdiction, and to the extent of their respective jurisdictions, and no farther.

Attachment where returnable. 64. SEC. II. When the amount sworn to shall be within the jurisdiction of such city courts, the attachment may be made returnable to the city court of that city, where the defendant resides, or where he last resided, except where the defendant resides out of the State; then and in that case, the attachment may be returned to any city court, having jurisdiction of the amount.

Attachment how directed. 65. SEC. III. Attachments returnable to any city court, shall be directed to the sheriff of such city, and to all and singular the sheriffs and constables of this State, who shall have all the authority of levying the same, that is given to officers by the seventh section of said act.

When returnable, and how long to be levied before Court. 66. SEC. IV. All attachments made returnable to the city courts aforesaid, shall be issued, at least, ten days before the sitting of the court next thereafter; and shall be levied, at least, nine days before such sitting; and all such attachments issued within ten days of any such sitting, shall be returnable to the court next to be held, after the expiration of such ten days.

Property levied on and ordered to be sold, etc. 67. SEC. V. The judge of any such city court may order sales of property levied on under attachments returnable to this court, in the same manner that a judge of a superior court may do, under the twelfth section of said act; and such property, when so ordered to be sold, shall be sold by the sheriff of the city, in such manner, at such place, and after such notice, as the judge ordering the sale, may direct.

Persons how Garnisheed, and how to answer. 68. SEC. VI. When it is desired to garnishee persons, not residing in the city in which the attachment issues, the same proceedings shall be had as are provided for in the fourteenth section of said act: *Provided*, that the garnishee shall be required to answer at the superior court, of the county of his residence.

Notice by whom served. Witn'ses may be examined, and how. 69. SEC. VII. The notice provided for in the twenty-second section of said act, may be served by the sheriff, or any constable of the city, in which the attachment issues. And plaintiffs in attachment may examine witnesses residing out of the city in which the attachment issues, upon complying with the requisites of the twenty-fourth section of said act.

*Scire Facias* to make parties. 70. SEC. VIII. In all attachment cases in such city courts, ten days' notice, by *scire facias*, as provided in the thirteenth [*thirtieth*] section of said act, shall be held and deemed sufficient.

71. SEC. IX. The proceedings authorized by the forty-seventh section



of said act, shall be allowed in such city courts, where the person sought to be garnisheed, resides elsewhere than in the city where the judgment was obtained, or where suit is pending. And the garnishee shall be required to answer at the superior court of his county, next to be held thereafter; but if the next court shall be held within less than ten days from the time such garnishment issues, or is served, such summons of garnishment shall require such garnishee to appear and answer at the next court thereafter.

47th section  
applied to  
City Courts.

Garnishee  
when and  
where to  
Answer.

\*72. SEC. X. Any judge of such city courts, or any mayor, or intendant, of such incorporated cities, or any member of the city council, may administer the oaths and issue attachments, and do all other things, requisite or proper, under said act, in the same manner and to the same extent, as a justice of the peace, magistrate, or notary public, may do under the said act: *Provided*, that in all such cases, the attachments shall be returnable to [*the city court*,] or [*where*] the judgment has been obtained, or the suit is pending, (in the city court,) of their respective cities.

Who may  
issue Attach-  
ments, etc.

Where return-  
able.

AN ACT to amend the forty-sixth section of the Attachment Law, assented to on the 4th day of March, 1856.—*Approved Dec. 21, 1857.*

73. SEC. I. That in all cases of attachment or garnishment, made returnable to a justices' court, the word *ten days*, shall be substituted, in lieu of the word *twenty days*.

Ten days  
substituted  
for twenty  
days.

74. SEC. II. That the jurisdiction of the justices' courts of this State, in cases of attachments, be and the same is hereby extended to the sum of fifty dollars, exclusive of interest.

SEC. III. [Repeals conflicting laws.]

AN ACT amendatory of "an act to authorize the issuing of Attachments and Garnishments, and to regulate the proceedings in relation to the same, and for other purposes therein mentioned," approved March 4th, 1856, so as to make the shares, or interest, of Stock-holders in any corporation in this State, subject to Attachment and sale; and for other purposes herein mentioned.—*Approved Dec. 13, 1858.*

75. SEC. I. That whenever process of attachment shall issue, according to the provisions of an (*the*) act of which this is amendatory, and the party against whom such process issues, shall have or own any interest, or amount of shares in any corporation in this State, the same may be attached, in manner following: the officer in whose hands the attachment is placed, shall endorse thereon, an entry of his levy on the corporate shares, or interest, of the debtor, and shall forthwith serve a copy of the attachment, with such entry endorsed, upon the president of the corporation, at the office of the company, or by leaving the same at the usual and most notorious place of doing business of said company; which said entry and service, shall amount to and be considered a seizure of said corporate interest, to all intents and purposes. And on execution issued on such attachment, may be sold, as the same can now be done, by ordinary execution.

Interest of  
Stockholder  
may be at-  
tached. How  
levy to be  
made, and ser-  
vice perfected.

Property how  
sold.

76. SEC. II. That from and after the entry of levy, and service of attachment on the corporation, as aforesaid, any transfer by the defendant, of the stock so attached, shall be absolutely void. And on execution issued, the same shall be sold by the sheriff or his deputy, according to the provisions of an act to make bank and other stock subject to execution, approved December 21, 1822, [*see Judiciary Executions.*] Certificates of purchase shall be granted by the officer selling, as therein prescribed; and on presentation of such certificate to the proper officer of said corporation, it shall be his duty to make such transfer on his books, (if necessary,) and afford the purchaser

Transfer void.

Certificates to  
be issued to  
the purchaser.



such evidence of title to the stock purchased, as is usual and necessary with other stock-holders.

SEC. 3. [Repeals conflicting laws.]

AN ACT to exempt Journeymen-Mechanics and Laborers, of this State, from the Garnishment of their Wages.—*Approved Dec. 27, 1845.*

77. That from and after the passage of this act, all journeymen-mechanics and day-laborers, shall be exempt from the process and liabilities of garnishment, on their daily, weekly or monthly wages, whether in the hands of employers or others.

NOTE.—The Supreme Court have decided, since the passing of the Act of 1856, that the foregoing Act is of force.

### AFFIDAVIT.

#### *Affidavit to obtain Attachment.*

STATE OF GEORGIA, } comes before the undersigned,  
County. } and on oath, saith that is  
indebted to him in the sum of . And that  
said [here insert the ground of Attachment.]  
Sworn to before me, this }  
day of 18 }  
J. P.

NOTE.—When the Affidavit is made by the Attorney-at-Law, or Agent of the party, “he may swear that the amount claimed to be due, is due, according to the best of his knowledge and belief.” The oath, however, without “according to his knowledge and belief,” is good.—7 *G' a. Rep.* 167.

#### *Bond given by the Plaintiff.*

STATE OF GEORGIA, } We, principal, and  
County. } security, acknowledge ourselves bound  
unto , in the sum of dollars;  
subject to the following conditions—  
That the said , principal, is seeking an  
Attachment against the said , which is now about  
to be sued out, returnable to the Term of the Court, of  
the County aforesaid. Now, if the said , shall pay all  
damages that the said may sustain; and also, all  
costs that may be incurred by him, in consequence of suing out such  
Attachment, in the event that the said , shall  
fail to recover, in said case, then this Bond to be void.

Executed in the presence of } [L. S.]  
(this day of 18 .) } [L. S.]

NOTE.—Where the Bond is executed by an Agent or Attorney-at-Law, he has the right and power of signing and sealing for the Plaintiff.

#### *Attachment.*

STATE OF GEORGIA, } To all and singular the Sheriffs and Constables of  
County. } said State.

You are hereby commanded to attach and seize, so much of the  
property of , as will make the sum of

and all costs. And also, to serve such summons of Garnishment as may be placed in your hands. And that you make return of this Attachment, with your actings and doings entered thereon, to the  
 Term of the Court, of said County,  
 to which Court this Attachment is hereby made returnable. Hereof fail not.

Witness my hand and seal, this

day of

18

[L. S.]

NOTE.—A Judge of the Superior Court, or Justice of the Inferior Court, or Justice of the Peace, or Notary-Public, has the authority of “issuing Attachment against the Defendant; which may be levied upon the properties of the Defendant, both real and personal, which may be found in this State;” and Stock in any Incorporated Company.

Attachments, in all the Courts, have the same formalities; the amount determines to which Court the Attachment shall be made returnable; to wit, if the sum be over fifty dollars, the attachment must be made returnable to the Superior or Inferior Court which first holds its session, after the issuing of the Attachment. If the sum be for fifty dollars, (interest not included,) or under, the Attachment must be made returnable to the Justices’ Court of the District, in the County where the Defendant resides.

### *Declaration in Attachment.*

STATE OF GEORGIA, }

Houston County. }

To the honorable Superior Court of said County.

The petition of *John Doe*, plaintiff in Attachment, (which Attachment is now pending in said Court,) respectfully sheweth, that *Richard Roe*, late of said County, owes to, and from your petitioner unjustly detains, the sum of *five hundred dollars, besides interest*. For that whereas, the said *Richard Roe*, heretofore, to wit, on the *first* day of January, in the year of our Lord eighteen hundred and *fifty-seven*, made his certain instrument in writing commonly called a promissory note, the date whereof is the day and year aforesaid, his own proper hand being thereto subscribed, and then and there delivered said promissory note to your petitioner, (and which is now here shown to the court.) Whereby, *one day after the date of said promissory note*, said *Richard Roe*, promised to pay your petitioner or bearer, *five hundred dollars*, for value received. Yet, the said *Richard Roe* although so indebted, and to pay the said sum of money often requested, has not paid the same, but the same to pay has heretofore refused, and still does refuse, to the damage of your petitioner *one thousand dollars*.

SIMON WAKE, *Pl’ff’s Att’y*.

NOTE.—The act of 1847, to “curtail and simplify Pleadings at law,” and the acts amendatory thereof, give a more concise form of Declaration, than the foregoing, which the Pleader may adopt, should he think it prudent to do so. But whichever form of Declaration may be used, it is proper to say, it is only required in the Superior and Inferior Courts, not in the Justices’ Court.—See *Declaration, Plea, etc.*

Where the Declaration is filed, the Plaintiff has the right of proceeding with his case, to trial on the merits, notwithstanding the Attachment may have been dismissed or discontinued.

### *Replevy Bond.*

STATE OF GEORGIA, }

Houston County. }

We,

as principal, and

as security, both of the State and County aforesaid, acknowledge ourselves held and bound unto Plaintiff in Attachment, in the sum of dollars; subject to the following condition—



Whereas, an Attachment, returnable to the Court, of said County, in favor of said Term of the  
 said against, has been levied upon the  
 property of said pay. Now, should the said 185  
 the Plaintiff in said Attachment, the amount of the Judgment and  
 Costs which he may recover in said case, then the above obligation to  
 be void; otherwise, of force. This day of  
 Executed in presence of { , prin'l. [L. S.]  
J. P. { , sec'ty. [L. S.]

### *Order of sale of Perishable Property.*

STATE OF GEORGIA, { It appearing to the undersigned, [Judge of the  
 County. } Superior Court, two Justices of the Inferior Court,  
 or Justice of the Peace, as the case is returnable to either of these  
 Courts,] that an Attachment at the instance of *John Doe*, against  
*Richard Roe*, returnable to the Term, of the Court,  
 of said County, has been levied upon [*one hundred bushels of Corn, or a*  
*Negro, as the case may be,*] which property is [*of a perishable nature;*  
*or liable to deteriorate in value, from keeping; or there is expense attendant*  
*upon keeping the same, as the case may be;*] and remains in the hands  
 of the levying officer, not having been replevied or claimed. There-  
 fore, it is hereby ordered, that [Sheriff of the County of  
, or Constable of District, of the County of  
, as the case may be,] proceed to sell the same, at the  
 [usual place of Sheriffs' or Constables' sales, or such other place, as the  
 Magistrates may direct, as the case may be,] after advertising the same,  
 according to the statute.

Given under my hand and official signature, this day of, 18 .  
[Judicial Officer's Name.]

NOTE.—The Sale must be advertised, at least, ten days before such Sale takes place.

If the Attachment be made returnable to the Inferior Court, the Order of Sale must be made and signed by two Justices of the Inferior Court. Where the Attachment is returnable to a Justices' Court, the Order of Sale must be made and signed by one of the Justices of the Peace of the District in which the Attachment is returnable; and in the latter case, the advertising and sale of the property, must be by one of the Constables of the District.

### *Advertisement by Levying Officer.*

#### SHERIFF'S SALE.

Will be sold, on the *first Tuesday in June next*, at the Court-House door in the town of *Perry*, in the County of *Houston*, between the lawful hours of sale, *five hundred bushels of Corn*; levied on as the property of *Richard Roe*, to satisfy an Attachment in favor of *John Doe*, returnable to the *Superior Court* of the County aforesaid, at the *October Term, 1859*.

*By order of the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.*

MADISON MARSHALL, *Sheriff*.

NOTE.—The sale must be advertised at least ten days before it takes place. The sale, when made by a Sheriff, must be advertised at the door of the Court-House of the County, and

at two other public places in the County. And when a Constable is to make the sale, it must be advertised at the door of the Court-House of the District. The money arising from the sale is subject to the order of the Court to which the Attachment is returnable.

### *Summons of Garnishment.*

STATE OF GEORGIA, }  
Houston County. } *To Robert Truth, Garnishee.*

You are hereby required to be and appear at the *Superior Court*, to be held in and for the County aforesaid, on the *fourth Monday in October* next; then and there to answer on oath, what you are indebted to *Richard Roe*; or what property and effects of the said *Richard Roe* you have in your hands, or had at the time of the service of this Summons of Garnishment. To render to *John Doe*, Plaintiff in Attachment, against said *Richard Roe*. Herein fail not.

*Given under my hand and official signature, this May 1, 1859,*

JAMES MACK, J. P.

NOTE.—The following is the form of the return made by the officer levying the Attachment, and serving the Summons of Garnishment.

STATE OF GEORGIA, } I have, this day, levied the within Attachment upon *five hundred bushels of Corn*, more or less, as the property of the Defendant. And have served *Robert Truth*, personally, with a Summons of Garnishment, returnable to the *October Term* of the *Superior Court*, of said County. This *May 5, 1859*.

MADISON MARSHALL, Sheriff.

In cases of Garnishment, when there is no Attachment, the Officer serving the same, should make the following entry upon the Bond and Affidavit—

STATE OF GEORGIA, } I have, this day, served *Robert Truth*, personally, with a  
Houston County. } Summons of Garnishment, returnable to the *October Term* of the *Superior Court* of said County. This *May 5, 1859*.

MADISON MARSHALL, Sheriff.

### *Answer of Garnishee.*

STATE OF GEORGIA, } In person appeared in open Court, *Robert*  
Houston County. } *Truth*, Garnishee in a Case of Attachment, (*John Doe*, against *Richard Roe*,) now here pending. Who says that he had in his hands, at the time of the service of the Summons of Garnishment, *one Bay Mule*, the property of the Defendant in Attachment. That he, deponent, is not now, nor was he at the time of the service of the Summons of Garnishment, indebted to the Defendant, in the Attachment aforesaid, in any sum whatever; nor had he in his possession any other property belonging to said Defendant, than that herein mentioned. Submitted this *October 25, 1859*.

Sworn to in Open Court, }  
William H. Miller, Clerk. }

ROBERT TRUTH.



*Notice to Defendant of the Pendency of the Attachment.*

STATE OF GEORGIA, } *Richard Roe*,—You are hereby notified that  
*Houston County.* } an Attachment in which I am Plaintiff and you  
 are Defendant, returnable to the *Superior* Court of the County  
 aforesaid, at the *October* Term, 1859, and which has been levied  
 on a *certain Bay Mule*, as your property, is now pending in said  
 Court, and that a Declaration was filed at said Term, in said Attach-  
 ment. You are hereby further notified, that I shall move said Court  
 for Judgment on said Attachment, according to the provisions of the  
 statute in such case made and provided. This notice is given that you  
 may appear in said Court, and defend yourself, in the cause aforesaid.  
 This *October* 25, 1859.

JOHN DOE, *Plaintiff.*

NOTE.—The above Notice may be served on the Defendant, by the Plaintiff, his Agent, or Attorney-at-Law, the Sheriff, or any Constable of the County, to which the Attachment is returnable, ten days before final Judgment, by giving him personally, a copy of the Notice, and returning the Original, with the service thereon, to the Court in which the Attachment is pending.

*Attachment moved for on Sunday.—Additional Oath.*

“And you do further swear, that you have reason to apprehend the loss of the debt, unless process of Attachment do issue on Sunday.”

*Making Parties.*

STATE OF GEORGIA, }  
*Houston County.* } To the Sheriff of                      County.  
 JOHN DOE                      }  
*vs.*                                      } Attachment returnable to                      Term, of  
 RICHARD ROE.                      } Court of                      County.

Whereas, *John Doe*, Plaintiff in the above case, died pending said Attachment, and the same has been suggested of record. And whereas, A B has been duly appointed *Administrator* of the Estate of said *John Doe*; the Defendant is hereby required to be and appear at the next term of said Court, to show cause why the said A B, *Administrator* as aforesaid, should not be made a party to said cause.

Witness, the honorable *Henry G. Lamar*, Judge of said  
 Court, this                      day of                      1859.

WILLIAM H. MILLER, *Clerk.*

*Oath in Case of Application for Attachment against Foreign Incorporation.*

STATE OF GEORGIA, } *James Watson* comes before the undersigned,  
*Houston County.* } and on oath saith, that the *Lowel Bank* is an In-  
 corporation transacting business in this State, but not incorporated by  
 the laws thereof. And that said *Lowel Bank* is indebted, &c. [Pro-  
 ceed as in ordinary cases. The Attachment must follow the Affidavit  
 in its peculiarities; and so with all the other proceedings.]

*Claim of Property Attached.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
 Houston County. } *Thomas Peters*, who being lawfully sworn, saith  
 that a certain *Black Horse*, levied on by virtue of an Attachment re-  
 turnable to the *October Term* of the *Superior Court* of said County,  
 eighteen hundred and *fifty-nine*, in favor of *John Doe* against *Richard*  
*Roe*, is the property of deponent, according to the best of his knowledge  
 and belief. And that said *Horse* is not subject to said attachment.

Sworn to and subscribed,  
 before me, this *May 1*, 1859. }  
*James Mack, J. P.*

THOMAS PETERS.

*Claim Bond.*

STATE OF GEORGIA, } We, *Thomas Peters* as principal, and *Ransom*  
 Houston County. } *Snipple* as security, acknowledge ourselves bound  
 unto *John Doe*, Plaintiff in Attachment, in the sum of *one hundred*  
 dollars, subject to the following conditions:—

Whereas, the said *Thomas Peters* has *this day* interposed his Claim  
 to a certain *Black Horse*, which has been levied on as the property of  
*Richard Roe*, by virtue of an Attachment in favor of *John Doe* against  
*Richard Roe*, returnable to the *Superior Court* of the County aforesaid,  
 at the *October Term*, eighteen hundred and *fifty-nine*. Now, should  
 said *Thomas Peters* pay the Plaintiff in Attachment all Damages which  
 the Jury on the trial of the right of property may assess against him,  
 in case it should be made to appear that such Claim was made for the  
 purpose of delay, then this Bond to be void; otherwise of force. This  
*May 1*, 1859.

Executed in presence of  
*James Mack, J. P.*

THOMAS PETERS, *prin'l.* [L. S.]  
 RANSOM SNIPPLE, *sec'ty.* [L. S.]

NOTE.—When the Bond is executed by an Agent or Attorney-at-law, let it be signed  
 thus: *Thomas Peters*, by his Agent (or Attorney-at-law,) *Simon Wake*.

*Forthcoming Bond given by Claimant.*

STATE OF GEORGIA, } We, *Thomas Peters* as principal, and *Willis*  
 Houston County. } *Snell* as security, acknowledge ourselves bound  
 unto *John Doe*, Plaintiff in Attachment, in the sum of *two hundred* dol-  
 lars, subject to the following condition—

Whereas, an Attachment in favor of *John Doe* against *Richard Roe*,  
 returnable to the *Superior Court* of the County aforesaid, at the *Oc-*  
*tober Term*, eighteen hundred and *fifty-nine*, has been levied upon a  
 certain *Black Horse*, which *Horse* has been claimed by said *Thomas*  
*Peters*. Now should the said *Thomas Peters* deliver said *Horse* to the  
 levying officer, at the time and place of sale; *Provided*, said *Horse*  
 should be found subject to said Attachment, then this Bond to be  
 void; otherwise, of force. This *May 1*, 1859.

Executed in presence of  
*James Mack, J. P.*

THOMAS PETERS, *princ'pl.* [L. S.] }  
 WILLIS SNELL, *sec'ty.* [L. S.] }

NOTE.—The proper execution of Bonds under this statute, (except the Attachment



Bond,) does not require that they should be tested or approved by an officer or any one else ; but as we consider that course best, in every instance, we advise it.

*Garnishment pending suit, or after Judgment.*

STATE OF GEORGIA, } In person came before the undersigned, *John*  
*Houston County.* } *Doe*, who being sworn saith, that he is Plaintiff,  
 and *Richard Roe* Defendant, in an action of *Assumpsit*, now pending in  
 the *Superior Court* of said County, [or in which action Judgment has been  
*rendered*, as the case may be.] And that said Plaintiff claims to be due  
 in said action, (or on said Judgment,) the sum of *one hundred* dollars,  
*besides Interest*. And said *John Doe* further swears, that he has reason to  
 apprehend the loss of said sum, or some part thereof, unless Process of  
 Garnishment do issue, directed to *Robert Truth*, who is indebted to  
 Defendant.

Sworn to and subscribed.  
 before me, this *May 1*, 1859.  
*James Mack, J. P.*

}

JOHN DOE.

NOTE.—Should the Affidavit be made by an Agent or Attorney-at-Law, “he must swear that the amount claimed to be due, is due according to the best of his knowledge and belief.” The statute gives the power to the Agent, etc., to sign the name of the person he represents.

*Bond under the above Affidavit.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Willis Snell* as  
*Houston County.* } security, acknowledge ourselves bound unto *Rich-*  
*ard Roe*, in the sum of *two hundred* dollars ; subject to the following  
 condition—

Whereas, the said *John Doe* has this day sued out a Writ of Garnish-  
 ment, directed to *Robert Truth*, as a debtor of *Richard Roe*, Defendant,  
 in an action of *Assumpsit*, now pending in the *Superior Court* of the  
 County aforesaid, in which action said *John Doe*, the principal obligor,  
 is Plaintiff. Now, should the said *John Doe* pay said *Richard Roe*, all  
 Costs and Damages that he may sustain, in consequence of suing out  
 said Garnishment, in case the said *John Doe* shall fail to recover in said  
 action of *Assumpsit*, then the above Bond to be void ; otherwise of force.  
 This *May 1*, 1859.

Executed in presence of  
*James Mack, J. P.*

JOHN DOE, prin'l. [L. S.]  
 WILLIS SNELL, sect'y. [L. S.]

NOTE.—Where the application is founded upon a Judgment, the Bond must express, as one of its conditions, “in the event that it shall be made to appear that the amount sworn to in the Affidavit, due in said Judgment, is not due.”

*Bond to Dissolve the above Garnishment.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *Thomas*  
*Houston County.* } *Peters* as security, acknowledge ourselves bound  
 unto *John Doe*, Plaintiff in an action of *Assumpsit*, now pending in  
 the *Superior Court* of the County aforesaid, in which said *Richard Roe*  
 is Defendant ; in the sum of *two hundred* dollars ; subject to the fol-  
 lowing conditions—

Whereas, the Plaintiff in the action aforesaid, has sued out a Writ  
 of Garnishment, directed to *Robert Truth*, a debtor of the Defendant in

said action; returnable to the *next* ensuing Term of the Court aforesaid. Now, should the said *Richard Roe*, pay the Judgment and Costs which may be recovered against him in said action of *Assumpsit*, then the above obligation to be void; otherwise of force. This *May 1*, 1859.

Executed in presence of  
*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
THOMAS PETERS, *sec'ty.* [L. S.]

NOTE.—Upon the filing of the above Bond with the Clerk of the Court in which the action of *Assumpsit* is pending, the Garnishment is dissolved, and the Defendant has the right of having the same dismissed. The Plaintiff has the right of entering up Judgment on the Bond for such amount as he may recover in his action of *Assumpsit*, “in the same manner as now by law, Judgment may be entered up against securities upon appeal.”

## CHAPTER IV.

### PUBLIC SALES.

AN ACT defining the liability of purchasers of Real and Personal Estate, at Executors', Administrators', Guardians' and Sheriffs' Sales, when they refuse or fail to comply with the terms of such sales.—*Approved Dec. 27, 1831.*

1. From and after the passage of this act, any individual who may become the purchaser of any real or personal estate, at any sale which shall hereafter be made at public outcry, by any executor, administrator, guardian or sheriff, and shall fail or refuse to comply with the terms of such sale when required so to do, shall be liable for the amount of such purchase money. And it shall be at the option of such executor, administrator, guardian or sheriff, either to proceed against such purchaser, for the full amount of the purchase-money, or to re-sell such real or personal estate, and then to proceed against the first purchaser, for the deficiency arising from such re-sale. And in case of sheriff's sales, such suit may be brought in the name of the sheriff, for the use of the defendant or plaintiff in execution, or any other person in interest, as the case may be.

Purchaser at certain sales not complying, what may be done.

2. SEC. II. No note or memorandum in writing shall be necessary to charge such purchaser at such sale, and who shall become such by reason of such real or personal estate being knocked off to him, as the highest bidder.

No note or memorandum necessary to charge purchaser.

SEC. III. All laws or parts of laws militating against this act, are hereby repealed.—[*See next Act.*]

AN ACT to amend the Law in relation to Public Sales.—*Approved Jan. 7, 1852.*

3. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall and may be lawful for any sheriff, coroner, constable, tax-collector, guardian, trustee, or any other officer of this State, when

Public sales may be continued from day to day.



selling property at public sale, by virtue of any law of this State, to continue such sale, from day to day, until such sale may be completed.

Notice of continuance must be given.

4. SEC. II. That when any trustee, or other officer, shall desire to continue his sale from day to day, by virtue of the foregoing provision, it shall be his duty to give notice of such intended continuance, in the advertisement of such sale.

SEC. III. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to define the liability of Executors, Administrators, Guardians and Trustees, and certain Public Officers, in certain cases.—*Approved Feb. 18, 1854.*

Public Officer not liable on common Warrant.

5. SEC. I. *Be it enacted*, That no executors, administrators, guardian, sheriff, coroner, or other public officers, shall be personally liable on any warranty made in any conveyance of property hereafter, by either of them lawfully sold, unless such executor, administrator, guardian, trustee, sheriff, coroner, or other public officers, shall distinctly express an intention, in such conveyance, to be personally bound by such covenant.

## CHAPTER V.

### DIVORCE.

AN ACT to carry into effect the ninth section of the third article of the Constitution.—*Approved Dec. 1, 1802.*

*Whereas*, marriage being among the most solemn and important contracts in society, has been regulated in all civilized nations by positive systems. *And whereas*, circumstances may require a dissolution of contracts founded on the most binding and sacred obligations which the human mind has been capable of devising, and such circumstances may combine to render necessary the dissolution of the contract of marriage, which dissolution ought not to be dependent on private will, but should require legislative interposition, inasmuch as the republic is deeply interested in the private happiness of its citizens. *And whereas*, the constitution of this State declares—[*Reciting the ninth section of the third article.*] And doubts being entertained by the judges of the superior courts of this State, with respect to their powers of deciding upon applications for divorce, before the General-Assembly have legislated upon the said section of the third article of the constitution; for the purpose of obviating said doubts, and of carrying into effect the said section of the constitution, therefore—

Manner of commencing a suit for Divorce. And service on the Defendant.

1. SEC. II. The proceedings on divorce shall be by petition to the court; which petition shall plainly and fully state the cause or causes of the application for such divorce; to which petition the clerk shall annex a citation, signed by such clerk, and bearing test in the name of the judge having cognizance of the case; directed to the sheriff, citing or requiring the defendant to appear at the court to which the same is made

returnable, thirty days before the sitting of the court, by serving a copy of such petition and citation on the defendant, or by leaving a copy at his or her most notorious place of abode.

2. SEC. III. The following proceeding shall be observed by the defendant, to wit:—The defendant shall appear at the court to which the petition and citation are made returnable, and on or before the last day of the court, shall make his or her answer or defensive allegation, in writing; signed by the party making the same, or his or her attorney; which may extenuate, deny or contain as much matter, or as many circumstances, in his or her defence, as the said defendant may think necessary and proper therein.

Manner of  
defence.

3. SEC. IV. Where the said defendant shall fail to appear, as aforesaid, the court shall proceed to give judgment by default, which shall be inquired of as the law directs and has heretofore been the custom and practice of courts, as in cases of default.

Judgment by  
default, where  
the party does  
not answer.

4. SEC. V. The verdict of the jury, which by the aforesaid section of the constitution, must in its nature be interlocutory, not definitive, shall be in the form and words following, to wit:—"We find that sufficient proofs have been referred to our consideration, to authorize a total divorce; that is to say, a divorce *a vinculo matrimonii* upon legal principles, between the parties in this case," [see 6 and 7.] A certified copy of which verdict, signed by the clerk of the court, at which the said verdict shall have been obtained, together with the records appertaining to the same, shall be and is hereby considered as a full compliance with the aforesaid section of the third article of the constitution.

Form of the  
Verdict in  
total Divorce.

5. SEC. VI. When any person shall be out of the limits of this State, that have complaint alleged against them, by virtue of this act, the judge presiding, may make a rule of court to compel their attendance, or proceed to trial [as] in case of default.

Absent De-  
fendant how  
proceeded  
against.

AN ACT to amend the foregoing.—*Approved Dec. 5, 1806.*

6. SEC. I. The divorces recognized by this act, shall be absolute and totally dissolve the marriage contract, or conditional and only separate the parties from bed and board, and provide for separate maintenance and support of the parties and their issue.

Divorces total  
or condit'nal.

7. SEC. II. All cases of divorce which shall come before the superior court, shall be tried by a special jury, who shall inquire into the situation of the parties before their intermarriage, and also, at the time of trial; and in all cases where they shall determine in favor of a conditional divorce, they shall, by their verdict, or decree, make provision out of the property of which the husband may be possessed, for the separate maintenance and support of the wife and the issue of such marriage; which verdict or decree, the said court shall cause to be carried into effect, according to the rules of law, or according to the practice of chancery, as the nature of the case may require.

Authority of  
the Jury, as to  
disposition of  
property.  
Court to carry

the Decree  
into effect.

8. SEC. III. In all cases where the verdict shall be for an absolute divorce, the party whose improper or criminal conduct shall authorize such divorce, shall not be permitted to marry again during the life of the other party; and in case of such second marriage, the party so offending shall be subject to the pains and penalties enacted against bigamy: *Provided* *always*, that where the marriage is declared void for such causes existing before such intermarriage as are recognized by the ecclesiastical courts, the said parties may marry again. Any thing herein contained, to the contrary notwithstanding.

In case of ab-  
solute Divorce  
offending par-  
ty may not  
marry during  
the life of the  
other, etc.

9. SEC. VI. In all cases where provision is made for the separate main-



After conditional Divorce husband not subject for debts of wife. maintenance of the wife, according to the provisions of this act, the husband shall not be subject to any contract made thereafter by such wife, but in all and every such case, the wife shall be subject to the payment of her own debts, out of her separate maintenance, during the time that such separation and separate maintenance shall continue.

Issue not bastardized. 10. SEC. VII. In all cases of divorce, the issue of such marriage shall not be bastardized, but shall be capable of taking by descent or distribution, from either of their said parents.

Schedule of property must be filed with the petition. 11. SEC. VIII. In all cases of application for a divorce, the party applying shall render a schedule on oath, of the property owned or possessed by said parties at the time of such application; or, if the parties have separated, at the time of such separation, which shall be filed of record by the clerk of the superior court. And after all just debts shall be paid, shall be subject to a division or equal distribution between the children of such parties, except the jury before whom the same may be tried, shall think proper to allow either party a part thereof.

How disposed of.

SEC. IX. [Repeals so much of the act of 1802, as is repugnant to this act.]

AN ACT to prescribe the Oath of the Special Jury in cases of Divorce.—  
*Approved Dec. 13, 1810.*

Whereas, some doubts have been entertained in the superior courts of this State, with regard to the proper oath to be administered to the special jury in cases of divorce—

Form of Oath in Divorce cases. 12. *Be it enacted*, That the oath to be administered to the special jury, in all cases of divorce, shall be in the words following, viz.: “You shall well and truly try the cause depending between A B, plaintiff, and C D, defendant, and a true verdict give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge,—so help you God.”

Jury men having conscientious scruples to be discharged and pannel filled up. AN ACT to regulate the Trial of Divorce cases.—*Approved Dec. 22, 1840.*

13. SEC. I. *Be it enacted*, That from and after the passing of this bill, on trial of any divorce case, it shall be the duty of the court, before striking off the jury by the parties, to inquire of the pannel whether any of such pannel are under conscientious scruples, in such case, and thereupon to discharge from the consideration of such case, all who shall, under oath, swear that he or they, have scruples of conscience, in granting a divorce. And if the pannel shall thereupon be reduced to a number less than eighteen, the court shall forthwith, fill up the pannel with unexceptionable talesmen, to the number of eighteen, to try such case; and from such pannel the jury for the trial of the cause shall be made.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT in relation to Divorces.—*Approved Feb. 22, 1850.*

Grounds for which total Divorces may be granted. 14. SEC. I. *Be it enacted*, That from and after the passage of this act, the following shall be the grounds, or legal principles, upon which divorces, from the bonds of matrimony, shall be granted, to wit—

1stly. Intermarriage by persons within the Levitical degrees of consanguinity or affinity.

2ndly. Mental incapacity, at the time of marriage.

3dly. Impotency, at the time of marriage.

4thly. Force, menaces or duress, in obtaining the marriage.

5thly. Pregnancy of the wife, at the time of marriage, without the knowledge of the husband.

6thly. Adultery, in either of the parties after the marriage.

7thly. Wilful and continued desertion, by either party, for the term of three years.

8thly. The conviction, of either party, of an offence involving moral turpitude, and under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer.

15. SEC. II. In case of cruel treatment on the part of one toward the other of the parties, or of habitual intoxication, the jury may according to the circumstances of such case, determine whether the divorce shall be from the bonds of matrimony, or from bed and board. Divorce may be total or conditional.

16. SEC. III. If the adultery, or desertion, or treatment, or intoxication, complained of, shall have been occasioned by the collusion of the parties, and done with intention of causing a divorce; or if the party complaining was consenting thereto; or if both parties have been guilty of like conduct, then no divorce shall be granted. Where there is collusion or mutual guilt, no divorce.

17. SEC. IV. All other grounds than those stated in the first and second sections of this act, shall only be causes for divorce from bed and board. Acts continued in force.

18. SEC. V. All laws now of force, in relation to divorces and the form of proceedings necessary to obtain them, that are not inconsistent with this act, be and the same are continued in full force.

AN ACT for the relief of certain citizens of this State, from any and all disabilities, pains and penalties to which they may now be subjected to by law.—*Approved Dec. 20, 1849.*

*Whereas*, the supreme court of this State has decided that final divorces cannot be obtained, and are not authorized by law for any cause arising subsequent to the marriage. *And whereas*, there are many citizens, male and female, who have been divorced, either by the judgment of the superior courts of this or some other State. *And whereas*, there are those who now reside in this State, who have been divorced by the acts and resolutions of the legislative authority of other of the American States. *And whereas*, doubts are entertained as to the validity and legality of said divorces so obtained; for remedy whereof—

19. SEC. I. *Be it enacted*, That where any person or persons, having been divorced as aforesaid, shall have heretofore married, or shall hereafter contract in marriage, that the same shall be legal and valid; and that all and every such person shall be exempt from all and every, the pains and penalties now prescribed against the crime of bigamy. And all privileges and immunities secured to the party in the decree of divorce, shall be valid in this State: *Provided*, that this act shall not extend to partial divorces, whether granted in the State of Georgia or elsewhere. Parties heretofore Divorced relieved from penalties.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Petition for Divorce.*

STATE OF GEORGIA, } *To the Superior Court of said County.*  
 Houston County. } The petition of *John Doe*, of said County, showeth, that on the *first* day of *January*, eighteen hundred and *fifty-five*, your petitioner and *Sarah V. Johnson*, of said County, then a single woman, were married in due form of law, to wit, in said County. The



good name and virtuous demeanor of the said *Sarah V.*, and the respectability of her family and connections, were considerations which of themselves forbade the remotest suspicion of her recent wicked and unlawful conduct (as hereinafter mentioned,) and her present fallen and depraved condition. Your petitioner and his said wife *Sarah V.* had lived together, from the time of their marriage aforesaid, until within a few days of the time of their separation, (during which time they had born to them *one* child named *William*,) as herein-after mentioned, in peace and comfort. And your petitioner sheweth, that he could not and would not have suspected or believed, until the painful reality broke in upon him, that said *Sarah V.* could have been guilty of the infamous crime of *Adultery*. Your petitioner avers, that he was ever affectionate and kind to his said wife, during the time aforesaid, and she never had the least cause to complain of your petitioner. And your petitioner, during all the time aforesaid, hoped and believed, that he would ever have the comfort and encouragement, in the undivided affections of his said wife: but so it is, that said *Sarah V.*, forgetful of her obligations and duty to your petitioner, on the *second* day of *June*, eighteen hundred and *fifty-seven*, [*here set out, fully and at large, the cause of divorce, as stated in the statute.*] And afterwards, to wit, on the *fifth* day of *June*, eighteen hundred and *fifty-seven*, when your petitioner came to the knowledge of the criminal conduct of the said *Sarah V.* he instantly separated from her. Wherefore, your petitioner prays that citation may issue, directing and requiring said *Sarah V. Doe*, wife of your petitioner, to be and appear, personally or by attorney, at the next Superior Court, to be held in and for said County, then and there, to show cause, (if any she can,) why said marriage, entered into as aforesaid, should not be annulled, set aside and made void, for the causes aforesaid, and a divorce *à vinculo matrimonii*, be pronounced between your petitioner and his said wife. And your petitioner avers, that the annexed schedule contains all the property possessed or owned by your petitioner, at the time of the separation aforesaid, (said *Sarah V.* having no separate estate.) And your petitioner will ever pray, etc.

JAMES A. PRINGLE, *Attorney pro Petitioner.*

NOTE.—If the *wife* be accused of *Adultery*, it is not absolutely necessary that the *name* of the party with whom she committed the act, should be mentioned in the petition.

Parol evidence is admissible to show that the schedule is incorrect. And also, to show the number, age and sex of the children, respectively.

### *Citation by the Clerk.*

STATE OF GEORGIA,

*Houston County.*

JOHN DOE

*vs.*

SARAH V. DOE.

To the Sheriff of said County—Greeting.

Libel for Divorce in the Superior Court.

The defendant, *Sarah V. Doe*, is hereby cited and required, personally or by attorney, to be and appear at the Superior Court, to be held in and for said County, on the *fourth Monday* in *October* next, then and there, to make her answer or defensive allegation, in writing, to

the Plaintiff's Libel, as in default thereof, the Court will proceed according to the statute, in such case made and provided.

Witness, the honorable Henry G. Lamar, Judge of said Court, this July 7, 1857.  
WILLIAM H. MILLER, Clerk.

NOTE.—A copy of the Schedule filed by the Plaintiff, should be served on the Defendant.

Sheriff's Return.

I have, this day, served the Defendant, personally, with a copy of this Libel for Divorce. July 8, 1859.

JOHN H. HALSTEAD, Sheriff.

NOTE.—The Sheriff must serve the Defendant personally, or by leaving the copy at her most notorious place of abode, thirty days before the sitting of the Court to which the case is made returnable.

Schedule Filed by the Plaintiff.

JOHN DOE  
vs.  
SARAH V. DOE. } Libel for Divorce, etc.

Schedule of property owned and possessed by the parties at the time of the separation.

The items of property to which the letter P is prefixed, were owned and possessed by the Plaintiff, at the time of the intermarriage. The items to which the letter D is prefixed, were possessed and owned by the Defendant, at that time:—

1 Negro fellow named Robin, (P,) worth	.	.	.	\$500 00
1 do. do. do. Sam, (P,) do.	.	.	.	500 00
1 do. do. do. Cato, (D,) do.	.	.	.	500 00
1 do. woman do. Chloe, (D,) do.	.	.	.	400 00
1 do. girl, do. Hannah, (D,) do.	.	.	.	350 00
4 Mules, (P,) worth, each, \$50 00,	.	.	.	200 00
1 Pleasure Carriage, (D,) worth	.	.	.	300 00
1 Pair Horses, (D,) do.	.	.	.	200 00
1 Lot of Land, No. 49, 10th Dis. Houston, (P,) worth	.	.	.	500 00
Various articles of Household Furniture, (P,) do.	.	.	.	100 00
Do. do. do. do. (D,) do.	.	.	.	100 00
Do. do. Kitchen do. (P,) do.	.	.	.	25 00
Do. do. do. do. (D,) do.	.	.	.	25 00
Do. do. Plantation Tools do. (P,) do.	.	.	.	20 00

Do debts due to, or by the parties. The articles of property were valued at the time of the separation.

JOHN DOE, Plaintiff.

In person appeared before the undersigned, one of the Justices of the Peace in and for said County, John Doe, who being sworn, saith, that the above Schedule contains a just and true statement of the property possessed and owned by deponent, on the day of his separation from his wife Sarah V. Doe.

Sworn to and subscribed,  
before me, this June 10, 1859. } JOHN DOE.  
James Mack, J. P.

Filed in Office, this 10th day of June, 1859.



*Answer of the Defendant.*

JOHN DOE  
 vs.  
 SARAH V. DOE. } Libel for Divorce, etc.—October Term, 1857.

And now, at this term comes the Defendant, by her attorney, *Samuel D. Killen*, and makes her Answer to the above action, as follows:— She admits the marriage as stated by the Plaintiff in his Libel; and also, the birth of the child therein named. She also, admits the correctness of the Schedule of Property filed by the Plaintiff, as to the items and their value. But this Defendant denies the charge of *Adultery*, made by the Plaintiff against her, either at the time specified in the Plaintiff's Libel, or at any other time, with any person whomsoever, and avers that she never did commit said crime. And the Defendant avers that the Plaintiff has no cause but that of *jealousy* to suppose or charge her with any such odious and abhorrent crime. And this Defendant avers that the Plaintiff is a man of lecherous habits, in the indulgence of which he frequently leaves her and her *child* all night, roaming over the neighborhood in search of women of lewd character and of easy virtue. That the Plaintiff has become, by means of his conduct and habits, estranged in feeling from Defendant and her *child*, and for the purpose of better concealing his unlawful conduct, has concocted the charges against Defendant, contained in his Libel. All of which charges and statements not herein admitted, are untrue and false. And of this the Defendant puts herself upon the country, etc.

SAMUEL D. KILLEN, *Att'y pro Def't.*

*Oath of the Jury.*

"You shall, well and truly, try the cause depending between A B, plaintiff, and C D, defendant, and a true verdict give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge—so help you God."

NOTE.—Jurors having conscientious scruples as to the propriety of granting Divorces, are not to sit on such trials; and if, for this reason, the pannel is reduced below eighteen, the Court is required to "fill up the pannel with unexceptionable talesmen, to the number of eighteen."

*Verdict or Decree of the Jury.*

"We find that sufficient proofs have been referred to our consideration, to authorize a total Divorce; that is to say, a Divorce *à vinculo matrimonii*, upon legal principles, between the parties in this case."

*Judgment of the Court.*

Two concurring verdicts having been rendered in this case, granting a Divorce *à vinculo matrimonii*, between the parties, upon legal principles, it is therefore considered and adjudged by the Court, that the matrimonial connection made and entered into between the parties, be and the same is hereby declared to be set aside and dissolved, as fully and effectually as if no such contract had ever been made and entered into

between them, (except as by law excepted.) And that said *John Doe* and said *Sarah V. Doe*, formerly *Sarah V. Johnson*, in future be held and considered as separate and distinct persons, altogether unconnected by any nuptial union or civil contract whatsoever. And it is further ordered, that the Plaintiff do pay the sum of *fifteen* dollars for the costs and charges in this behalf laid out and expended. Judgment signed this 20th day of *October*, 1859. JAMES A. PRINGLE, *Pl'ff's Att'y*.

*Notice where the Defendant is not in the State.*

STATE OF GEORGIA, } SUPERIOR COURT, *October Term*, 1859.  
*Houston County.* } Present—his honor *Henry G. Lamar*, Judge.  
 JOHN DOE } Libel for Divorce.  
 vs. }  
 SARAH V. DOE. } Rule to perfect service.

It appearing to the Court by the return of the Sheriff, that the Defendant does not reside in this County; and it further appearing that *she* does not reside in this State, it is on motion of Counsel ordered, that said Defendant appear and Answer, at the next term of this Court; else that the case be considered in default and the Plaintiff allowed to proceed. And it is further ordered, that this Rule be published in the *State Press*, once a month for four months.

*A true extract from the Minutes.*

WILLIAM H. MILLER, *Clerk.*

PROCEEDINGS IN CASES OF PARTIAL DIVORCE.

*Verdict or Decree of the Jury.*

We, the Jury, find that sufficient proofs have been referred to our consideration, to authorize a Partial Divorce between the parties; that is to say, a Divorce *à mensa et thoro*, upon legal principles. That the Plaintiff shall pay *annually*, on the first day of *January*, to the Defendant, during her natural life, the sum of five hundred dollars, for her separate use and maintenance; and also, at the same time, the sum of *eight hundred* dollars, for the support and maintenance of the issue of such marriage, during *their* natural lives.

JAMES STURGIS, *Foreman.*

*Judgment of the Court.*

Whereupon, it is considered and ordered by the Court, that a Divorce *à mensa et thoro*, between the parties, be declared and established. And it is further ordered, that the Plaintiff do pay *annually*, to the Defendant, during her natural life, the sum of *five hundred* dollars, for her separate use and maintenance and support. And it is further ordered, that the Plaintiff do pay, on the *first day of January annually*, the sum of *eight hundred* dollars, for the support and maintenance of the issue of such marriage, during *their* natural lives. Judgment signed this *October 20*, 1859.



## CHAPTER VI.

## DOWER.

AN ACT to authorize the Superior Courts of this State to appoint persons to assign and set off Dower, and to prescribe the mode of proceeding therein.—*Approved Dec. 7, 1824.*

Superior C't  
authorized to  
appoint Com-  
missioners for  
the purpose  
of assigning  
Dower.

Commiss'ners  
must be sw'n.  
Notice must  
be given; to  
whom, and  
how.

When appli-  
cation may  
be made.

Right may be  
traversed:  
issue found  
and tried by a  
special Jury.

Lands in  
different coun-  
ties, applica-  
tion must be  
made in each.

Return to be  
made to the  
next term of  
the Court, and  
to be conclu-  
sive between  
the parties,  
unless shown  
to be wrong,

1. SEC. I. The superior courts of this State shall have power and authority, upon the written application of any person entitled to dower, in any lands and tenements in this State, to appoint three [*five—see 7,*] fit and discreet freeholders, of the county in which the application is made, and to cause to be issued, by the clerk of said court, a writ for that purpose, (to be devised and framed according to the nature of the case,) directing said freeholders, or a majority of them, to enter upon such lands and tenements, and to admeasure, lay off and assign, the part or share thereof, to which, by the laws of this State, the applicant is entitled; the persons so appointed, being first sworn, duly and impartially, to execute said writ—[*see 7:*] *Provided*, that the person so applying, shall give to all the parties in interest, their agents, attorneys or guardians, twenty days' written notice, if they reside within the State, and if they reside without the State, three months' notice, in one of the public gazettes of this State, of their intended application, for such assignment of dower: *And provided also*, that the application shall not be made until the expiration of three months after the death of the person, to whom the said lands and tenements belonged.—[*See 7.*]

2. SEC. II. In case any person or persons who may be interested in said land, shall traverse or deny the right of the applicant to such dower, (the grounds of which traverse or denial shall be plainly and distinctly set forth, in writing,) the court shall order an issue to be made up, and the same shall be tried by a special jury, at the same term, unless it should appear to the court that the principles of justice should require a continuance, which may be allowed for one term and no longer. And the verdict of the jury shall be final and conclusive, between the parties.

3. SEC. II. When any person is entitled to dower in lands and tenements, situate in different counties of this State, application shall be made in the manner and under the restrictions herein-before pointed out, by the superior courts in each of such counties; and the writs granted by said courts, shall only extend to the laying off and assigning dower in the lands and tenements situate within the county in which such application is made.

4. SEC. IV. The persons appointed for the purposes herein-before expressed, shall return their proceedings on such writs, to the term of the superior court next ensuing the one at which they were granted, there to remain of record, and which shall be final and conclusive between all the parties concerned, unless some person interested shall show a good and probable matter in bar of the confirmation of such assignment, or that the applicant is not entitled to so much as hath been assigned; in which case

the court shall permit an issue to be made up and tried by a special jury, without delay; unless good and sufficient cause should be shown to the court, for a continuance; which may be granted for one term and no longer. And if the jury shall find in favor of the return and assignment already made, the same shall stand confirmed; but if they should find against it, the court shall, forthwith, award another writ, directing a new assignment, which shall be executed and returned as before directed, and which shall be final and conclusive to all the parties. And in all cases where the assignment, so made, is confirmed by the court, writs of possession, on the application of the person to whom dower is so assigned, shall be issued by the clerk of the superior court from which the writ originally issued for such assignment, to give such person possession of the lands and tenements so assigned to them.

Writ shall issue, and return must be made, etc.

5. SEC. V. The persons so making the assignment, shall in every case, give to the parties in interest, ten days' notice, if they reside within the State, and if they reside without the State, two months' notice, in one of the public gazettes of this State, of the time and place of making said assignment.—[See 7.]

Notice must be given to the parties.

6. SEC. VI. The persons making such assignment shall be authorized to appoint and employ a surveyor to assist in executing the writ to them directed, who together with themselves, shall be entitled to such compensation for their services as the court shall deem reasonable and just; and in case the person applying for said writ, shall refuse or neglect to pay the sum awarded by the court, execution shall be issued therefor, as on a judgment.

A Surveyor may be employed; his pay provided for.

SEC. VII. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend "an act to authorize the Superior Courts of this State, to appoint persons to assign and set off Dower, and [to] prescribe the mode of proceeding therein." And to define how Dower shall be laid off and assigned.—*Approved Dec. 21, 1839.*

7. SEC. I. *Be it enacted*, That from and after the passage of this act, the superior courts of this State, shall have power and authority, upon the written application of any person entitled to dower in any lands and tenements in this State, to appoint five fit and discreet freeholders of the county in which the application is made, and cause to be issued by the clerk of said court, a writ for that purpose, (to be devised and framed according to the nature of the case,) directing said freeholders, or a majority of them, to enter upon such lands and tenements, and to admeasure, lay off and assign the one-third part of said lands, including the tenements, having regard to the shape and valuation of such lands: *Provided*, the said land should be without any corporate city, village, or public place of business. And all lands within any corporate city, village, or public place of business, it shall be the duty of said freeholders, or a majority of them, to admeasure, lay off and assign one-third part of all the lands, tenements, to which the applicant is entitled, according to quantity or valuation, as they may think proper, just and equitable. The person so appointed, shall take the following oath: "I do solemnly swear, (or affirm,) that I will duly and impartially execute the law, to the best of my understanding—so help me God:" *Provided*, that the person so applying, shall give notice of twenty days, if they reside within the State, and if they reside without the State, three months' notice, [see 13,] in one of the public gazettes of this State, [of] their intended application, for such assignment of dower: *And provided also*, the application shall not be made until the expiration

Five Freeholders to be appointed for the purpose of assigning Dower.

Lands in City or Village, how admeasured.

Oath of the Commiss'ners. Notice must be given.



Application cannot be made under 3 months. of three months after the death of the person to whom the said lands and tenements belonged.

NOTE.—By the Act of Feb. 18, 1854, it is provided that where two or more persons “are appointed by law, to do any particular act, (and required to take an oath for its proper performance,) may and they are hereby authorized, to take and subscribe the oath, necessary to be taken in such cases before each other.” Amongst the particular cases, enumerated by the Act, is that of Dower; therefore, the commissioners are allowed to administer the foregoing oath to each other.

AN ACT to limit the time within which Widows may apply for the assignment of Dower.—*Approved Dec. 21, 1839.*

7 years allowed to apply for Dower. 8. SEC. I. *Be it enacted*, That in all cases hereafter, where any husband shall die, application for the assignment of dower, shall be made by his widow, within seven years after his death, otherwise her right to dower shall be absolutely barred.

NOTE.—By the 13th sec. of the Statute of Limitation, passed March 6, 1856, it is provided, “That when any Widow shall be entitled to Dower, application for the assignment of such Dower, shall be made by said Widow within seven years from the time such right to Dower *accrued*, and not after.”—*See Judiciary, Statute of Limitation.* The question is, does the right *accrue* upon the death of the Husband? or, upon the granting of Letters of Administration?

AN ACT to alter and amend an act entitled “an act for the more effectually securing the Probate of Wills; limiting the time for Executors to qualify and Widows to make their election;” and to change the mode of ascertaining and fixing in certain cases, the Dower of Widows.—*Approved Dec. 9, 1841.*

Widow to make her election one year after Letters Testamentary or Administration have issued, or cast upon Dower. 9. SEC. I. *Be it enacted*, That from and after the passage of this act, so much of the above-recited act as requires all widows within one year after the death of their husbands to make their election or portion out of the estate of the deceased, be and the same is hereby repealed; [*the section referred to is the fourth section of the act of Dec. 10, 1807,*] and in lieu thereof, that it shall be the duty of every Widow, within one year after Letters Testamentary, or of Administration, have been granted on her husband's Estate, to make her Election or portion out of the Estate of the deceased, and failing so to do, shall be subject to the disability in the above-recited act specified, [that is, “shall be considered as having taken her dower, or thirds, and shall forever after be debarred from taking any other part or portion of the said Estate.”]

Widow may have Dower or one-third of the proceeds of the sales of the Land during her life; held by Executor in trust; interest paid to Widow. Account to Ordinary must be made. 10. SEC. II. Each and every widow, after having made her election of dower, may have her dower assigned out of such land or lands, as she may be endowable, according to the laws now of force in this State, or by and with the consent of the executor or administrator, [or]\* take one-third part of the proceeds of the sales thereof; which shall be held by such executor or administrator, in trust for the benefit of said widow, and after her death, to revert to the estate of her deceased husband; [*see 15:*] *Provided*, that nothing herein contained shall authorize said executor or administrator to lessen said third-part, but that the interest only thereof, shall be paid annually to the widow of such deceased husband: *And provided further*, that the account between the widow and the executor or administrator, shall be in writing, and shall be recorded and filed in the office of the clerk of the court of ordinary.

\* This word “or” should have been omitted in the original act. It mars the sense of the act.



AN ACT in relation to the assignment of Dower.—*Approved Feb. 23, 1850.*

11. SEC. I. *Be it enacted*, That in all cases where commissioners are appointed to assign dower to any widow, and there shall be two or more tracts of land of her deceased husband in the county, they shall be and are hereby authorized, if in their judgment it will promote the interest of all parties concerned, to assign and lay off to such widow her dower in one of said tracts, instead of each, allowing to her, such portion thereof as will be a just and fair equivalent for the dower in all said tracts.—[*See next Act.*]

Where there is more than one tract, Dower may be all in one.

12. SEC. II. Such commissioners, whether there be one or more tracts of land, shall if they deem it of advantage to all parties concerned, with the consent of the widow and the legal representative of her deceased husband, [*to*] ascertain and assign to her a sum of money, to be paid to her by such legal representative, in lieu of dower, in any or all of said tracts of land in the county; which sum shall be paid to her when the report of said commissioners is made the judgment of the court.—[*See next Act.*]

Money may be paid in lieu of Dower, by consent of parties.

AN ACT to amend the several acts in relation to the assignment of Dower.—*Approved Feb. 21, 1850.*

13. SEC. I. *Be it enacted*, That from and after the passage of this act, that persons applying for dower, under the above-recited section, it shall only be necessary for the applicant to give the representative of such estate twenty days' written notice of such intended application, instead of giving all the parties notice, as now required by law.—[*The section here alluded to, is the first section of the Act of Dec. 21, 1839. For an amendment to the Act of 1850, see 16.*]

Notice only to Representative of the Estate.

14. SEC. II. In all cases where commissioners are appointed to assign dower to any widow, and there shall be two or more tracts of land of her deceased husband in the same county, they shall be and are hereby authorized, if in their judgment it will promote the interest of all parties concerned, to assign and lay off to such widow, her dower in one of said tracts, instead of each, allowing to her such portion thereof as will be a just and fair equivalent for her dower in all of said tracts, the widow having the right to select the tract from which her dower may be laid off.

Where there are two tracts, Dower may be laid off in one; the Widow may select.

15. SEC. III. Such commissioners, whether there be one or more tracts of land, shall if they deem it of advantage to all parties concerned, (with the consent of the widow and the legal representative of her deceased husband.) ascertain and award to her a sum of money to be paid to her by such legal representative, as an equivalent for and in lieu of dower, in any or all of said tracts of land in the county; which sum shall be paid to her when the report of said commissioners is made the judgment of the court.

Money instead of Dower may be given. Paid to Widow.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to amend the several acts in relation to the assignment of Dower," assented to Feb. 21st, A. D. 1850.—*Approved Dec. 13, 1858.*

16. SEC. I. That the following proviso be added to the first section of said act, to wit: *Provided*, said applicant is not the representative of said estate.

Added to Act of 1850.

### *Widow's Election.*

STATE OF GEORGIA, } To John Doe, Administrator of the Estate of  
Houston County. } Richard Roe, deceased, late of said County.

I do, by these presents, *this day*, make my election, to take a *Child's*



part or *Distributive share* in the land of my late husband, said *Richard Roe*. This *May 1*, 1859.

Attest—  
*James Mack, J. P.*

RACHAL ROE, [L. S.]  
Widow of *Richard Roe*, dec.

### *Notice of Application for Dower.*

STATE OF GEORGIA } To *Charles Smith*, Administrator of the Estate  
Houston County. } of *James Wall*, deceased, late of said County.

You are hereby notified that I shall apply to the next Superior Court to be held in and for said County, on the *fourth Monday in April next*, for the appointment of Commissioners, to admeasure, lay off and assign to me, Dower in the lands of the Estate of said deceased, lying in said County; agreeably to the statute in such case made and provided. This *May 1*, 1859.

SARAH WALL,  
Widow of *James Wall*, dec.

### *Petition for the appointment of Commissioners.*

STATE OF GEORGIA, }  
Houston County. } To the Superior Court of said County.

The Petition of *Sarah Wall*, widow and relict of *James Wall*, deceased, late of said County, sheweth, that *James Wall*, the husband of your Petitioner, departed this life intestate, more than three months before this application, and that *Charles Smith* has administered on his estate in due form of law. And your Petitioner sheweth, that at the time of her intermarriage with said *James Wall*, deceased, she was possessed, as of her own right and property, of lot of Land, number forty-nine, in the tenth district of said County, containing two hundred two and one-half acres, more or less; of which lot of Land said *James Wall*, deceased, became possessed by his intermarriage with your Petitioner.

And your Petitioner sheweth, that at the time of the death of the said *James Wall*, he was seized and possessed, as of his own right and property, of lot of land number fifty, in the tenth district of said County, containing two hundred two and one-half acres, more or less.

And your Petitioner sheweth, that notice of this application has been given to *Charles Smith*, Administrator of the Estate of said deceased, according to the requirement of the statute in such case made and provided; wherefore, Petitioner prays the appointment of Commissioners to lay off and assign to her Dower in and to said lots of Land afore-described. And as in duty bound, etc.

JAMES A. PRINGLE, *Petr's Att'y.*

NOTE.—It may be proper here to remark, that a Widow is not barred of her right to Dower in Mortgaged Premises, unless she has legally relinquished that right.—See 3d sec. Act of 1768, "To prevent Fraudulent Mortgages," etc.

And it may, also, be proper to say, that by the Act of 1826, "To enable Feme Coverts to Convey their Estates," etc., that Widows are not entitled to Dower, in Lands of their Husbands, conveyed during the coverture.

*Traverse of the right of Dower.*

STATE OF GEORGIA, }  
 Houston County. } Superior Court, April Term, 1859.

And now, at this term, comes *Charles Smith*, Administrator of the Estate of *James Wall*, deceased, by his attorney *Thomas Felder*, and traverses the Application of *Sarah Wall*, and denies her right to Dower, because, [here set out fully and distinctly, the causes and facts going to show that the Petitioner has no right of Dower in the Lands described in her Petition.]

Of all which the said Administrator puts himself upon the country,  
 etc. THOMAS FELDER, *Att'y pro Adm'r.*

*Verdict of the Jury on the above Issue.*

We, the Jury, find the Issue in favor of the Applicant.

MARCUS KUNZE, *Foreman.*

*Appointment of Commissioners, (entered on the Minutes.)*

Upon the application of *Sarah Wall*, widow of *James Wall*, deceased, showing that she is entitled to Dower in lots of land, numbers forty-nine and fifty, in the tenth district of Houston County, and praying the appointment of Commissioners for the purpose of admeasuring, laying off and assigning Dower to Petitioner, in and to said lots of Land; it is ordered, that *Thomas Moore, John Bacon, William Sloan, Peter West and James Cash*, Freeholders of this County, be and they are hereby appointed Commissioners for the purposes aforesaid, and that the Clerk of this Court issue a Writ to said Freeholders accordingly.

*Writ.*

STATE OF GEORGIA, }  
 Houston County. } . To *Thomas Moore, John Bacon, William Sloan,*  
                                       } *Peter West and James Cash*, Freeholders of said  
                                       } County.

Whereas, at our Superior Court, held in and for said County, on the fourth Monday in April, last past, *Sarah Wall*, widow and relict of *James Wall*, deceased, late of said County, made known to said Court, by her Petition, that as widow as aforesaid, she was entitled to Dower in lots of Land numbers forty-nine and fifty, in the tenth district of said County, each of said lots containing two hundred two and one-half acres, more or less.

And whereas, said Petitioner prayed for the appointment of Commissioners for the purpose of admeasuring, laying off and assigning to her, Dower in and to said lots of Land; and you having been appointed Commissioners for said purpose: now, therefore, you the said *Thomas Moore, John Bacon, William Sloan, Peter West and James Cash*, Freeholders of said County, (or a majority of you,) are hereby authorized and required, (first giving to the parties in interest, the notice required by law,) after taking the oath required by law, to proceed to the execution of this Writ. And having appointed a competent Surveyor, (if



deemed necessary,) to enter upon said *lots of Land*, and having regard to the shape and valuation of said *lots of Land*, including the tenements, to admeasure, lay off and assign Dower in said *lots of Land*, to the said *Sarah Wall*, widow of said *James Wall*, deceased ; or ascertain and award to her, a sum of money, in lieu of Dower, with the consent of said widow and the legal Representative of the Estate, according to the statute.

And you are further directed and required, to return your actings and doings in the premises, to the next Superior Court, to be held in and for said County, on the *fourth Monday in October* next. Herein fail not.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this *April 25, 1859*.

WILLIAM H. MILLER, *Clerk*. [L. S.]

*Oath of Commissioners, (written on the back of the Writ.)*

"I do solemnly swear, (or affirm,) that I will duly and impartially execute the law, to the best of my understanding—so help me God."  
This *April 25, 1859*.

Sworn to and subscribed, }  
before me—*James Mack, J. P.* }

THOMAS MOORE.  
JOHN BACON.  
WILLIAM SLOAN.  
PETER WEST.  
JAMES CASH.

NOTE.—The Commissioners may be sworn together—they must each for himself, sign the oath ; they may administer the oath to each other.

*Notice of Commissioners to Party in interest.*

STATE OF GEORGIA, } *To Charles Smith, Administrator of the Estate*  
*Houston County.* } of *James Wall*, deceased.

You are hereby notified, that by virtue of a Writ from the Superior Court of said County, to us directed, we shall on the *first day of July* next, enter upon lots of Land numbers *forty-nine and fifty*, in the *tenth* district of said County, for the purpose of admeasuring, laying off and assigning Dower, in and to said *lots of Land*, to *Sarah Wall*, widow of *James Wall*, deceased. This *April 25, 1859*.

THOMAS MOORE, }  
JOHN BACON, }  
WILLIAM SLOAN, } *Com'rs.*  
PETER WEST, }  
JAMES CASH. }

*Return of the Commissioners.*

STATE OF GEORGIA, }  
*Houston County.* } *To the Superior Court of said County.*

The undersigned, Commissioners appointed for the purpose of admeasuring, laying off, and assigning Dower to *Sarah Wall*, widow of *James Wall*, deceased, in *lots of Land* numbers *forty-nine and fifty*, in

the *tenth* district of said County, hereby report, that after having given notice to the parties in interest, as required by law, and having employed *Charles Willis*, as Surveyor, the undersigned proceeded, on the *first* day of July last past, to the discharge of the duties required of them by law and said Commission. Upon a survey of lot of Land number *forty-nine*, in the *tenth* district of said County, it was ascertained that said lot contained two hundred and thirteen acres; seventy-one acres in the south-east corner of said lot, (on which is situate the dwelling-house,) was admeasured, laid off and assigned to the Petitioner, as Dower, (the metes and bounds of which will more fully appear by reference to the annexed plat of survey.)

Upon a survey of lot of land number *fifty* in the *tenth* district of said County, said lot was ascertained to contain one hundred and fifty acres; fifty acres in the south-west corner of said lot of Land were laid off and assigned to the petitioner, as Dower, (the metes and bounds of which will more fully appear by reference to the annexed plat of survey.)

The undersigned, (with the said Surveyor,) were employed three days in this service. All of which is respectfully submitted. This *July 5*, 1859.

THOMAS MOORE,	} <i>Com'rs.</i>
JOHN BACON,	
WILLIAM SLOAN,	
PETER WEST,	
JAMES CASH,	

NOTE.—The Return of the Commissioners must show plats of survey, of all the lands in which Dower has been assigned.

Great accuracy should be observed on the part of the Commissioners, for their Return, when established, becomes a Muniment of Title.

### *Issue formed upon the Return of the Commissioners.*

And now, at this term, comes *Charles Smith*, administrator of the Estate of *James Wall*, deceased, by his attorney *Thomas Felder*, and objects to the confirmation of the Assignment of Dower to *Sarah Wall*, widow of said deceased, made by the Commissioners appointed for that purpose, at the *April* term; and for matter of objection to the Assignment says, [here state plainly, fully and distinctly the objections to the Assignment.]

Wherefore, he prays that said Assignment may be set aside.

THOMAS FELDER, *Att'y pro Adm'r.*

And now comes *Sarah Wall*, the applicant for Dower, by her attorney *James A. Pringle*, and denies [here set out a full and fair denial of each and every particular contained in the objections of the Administrator.]

Wherefore, she prays that said Assignment may be confirmed, and made the order and Judgment of the Court, etc.

JAMES A. PRINGLE, *Pet'r's Att'y.*

### *Verdict of the Jury.*

We, the Jury, find in favor of the Return and Assignment, with costs of suit.

BENJAMIN RUSSELL, *Foreman.*



*Judgment of the Court.*

Whereupon, it is considered and ordered by the Court, that the Return of the Commissioners be made the Judgment of the Court, and stand confirmed; that said Return and Assignment be recorded, and that it be final and conclusive between the parties thereto. And it is further ordered, that Writs of Possession to the Dower assigned, be issued by the Clerk of this Court to *Sarah Wall*, the applicant, upon her application for the same. And it is further ordered, that the applicant for Dower pay each of the acting Commissioners the sum of *fifteen* dollars, and the Surveyor, *Charles Willis*, the sum of *fifteen* dollars, for their respective services in this behalf. And it is further ordered, that the applicant for Dower recover against the Estate of *James Wall*, deceased, the sum of *ten* dollars, (as costs for the two issues in this case tried,) to be levied of the goods and chattels, lands and tenements, of said Estate, in the hands of his Administrator to be administered. And said Administrator, etc. Judgment signed, this *October 20*, 1859.

JAMES A. PRINGLE, *Pet'r's Att'y.*

*Writ of Possession.*

STATE OF GEORGIA, }  
Houston County. }

To the Sheriff of said County—Greeting.

Whereas, *Sarah Wall*, widow and relict of *James Wall*, deceased, late of said County, did lately, in our Superior Court, by the Judgment of said Court, recover for her Dower, against *Charles Smith*, Administrator of the Estate of *James Wall*, deceased, [here set out fully and particularly, as in the Return, the Land assigned as Dower,] (the metes and bounds of which will more fully appear by reference to the annexed plat of survey.) Which said premises have heretofore been and still are unjustly withheld from the said *Sarah Wall*, by *Charles Smith*, Administrator of the Estate of *James Wall*, deceased, whereof he is convicted, as appears to us of record. And forasmuch as it is adjudged in said Court, that the said *Sarah Wall* have execution upon her said Judgment, against the said *Charles Smith*, Administrator, as aforesaid, according to the force, form and effect of her said recovery; therefore, we command you, that without delay, you deliver to the said *Sarah Wall* possession of the said premises, so recovered, with the appurtenances thereto belonging. And that you certify to our said Court, to be held in and for said County, on the *fourth* Monday in *April next*, in what manner you shall have executed this Writ. And have you, at said Court, this Writ.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this *October 30*, 1859.

WILLIAM H. MILLER, *Clerk.*

NOTE.—The Clerk must annex a correct copy (from the Return,) of the plat of survey, to the Writ of Possession.

*Writ of Possession, with fi. fa. for Costs.*

["In what manner you shall have executed this Writ," and then as follows:] We also command you, that of the goods and chattels,

lands and tenements, of the said Estate, in the hands of the said *Charles Smith* to be Administered, you cause to be made *ten* dollars, which, in our same Court, were adjudged to the said *Sarah Wall*, for her costs and charges by her, about her Writ in that behalf expended, whereof the said *Charles Smith*, Administrator, as aforesaid, is convicted, as appears to us of record. And that you have said sum of money before our said Court, on the day aforesaid, to render unto the said *Sarah* for her costs aforesaid. And have you, then and there, this Writ.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this October 30, 1859.*

WILLIAM H. MILLER, *Clerk.*

NOTE.—Separate Executions against the parties may be issued by the Clerk, for the Costs, at his discretion.

### *Oath of Surveyor.*

You do solemnly swear, (or affirm, as the case may be,) that you will faithfully and impartially do and perform all and singular, the duties required of you as Surveyor, in the contemplated Survey now to be made; to the best of your skill and ability—so help you God.

NOTE.—Should the Commissioners employ the County-Surveyor, the above Oath may be omitted, as he performs his duties under his general oath of office.

The Surveyor employed, whether he be the County-Surveyor or another, has the right to administer the Oath to the Chain-bearers.

Should a Surveyor be employed, other than the County-Surveyor, the Commissioners are authorized to administer the Oath to him.

### *Oath of Chain-bearer.*

You do solemnly swear, (or affirm, as the case may be,) that you will faithfully and impartially do and perform all and singular, the duties required of you as Chain-bearer, in the contemplated Survey now to be made, to the best of your skill and ability—so help you God.

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## CHAPTER VII.

### RENT.

AN ACT to point out the mode for the collection of Rents.—*Approved Dec. 16, 1811.*

1. SEC. I. From and after the passage of this act, it shall and may be lawful for any person [see 12,] who may hereafter have rent due, where the same does not exceed thirty dollars, to make application to any justice of the peace within the district where his, her or their tenant may reside, and obtain from such justice, a distress warrant for the sum claimed to be due, on oath in writing, for the said rent; and the same may be levied by any constable duly qualified, on any property belonging to the said tenant; who shall advertise

Distress War-  
rant under  
\$30 to be  
levied by a  
Constable.



Exceeding \$30 to be levied by Sh'ff. Defendant may replevy.

and sell the same, under the same rules and regulations as other sales under execution. And where any distress shall issue for a sum exceeding thirty dollars, it shall be levied by the sheriff of said county, advertised and sold, as in cases of other executions: *Provided nevertheless*, that the party distrained, shall be entitled to replevy the goods so distrained, by making oath that the sum, or some part thereof, distrained for, is not due, and give security for the eventual condemnation money; and in that case, it shall be the duty of such officer to return the same to the court having cognizance of the same, and the same shall be determined by a jury, as practised in other cases of claim.

Claims how made and tried.

2. SEC. II. Where property distrained may be claimed by a third person, the same shall be claimed on oath, which claim shall be returned, tried and determined, in like manner and under the same rules and regulations as are by law pointed out for the trial of the right of property.

Distress not to be preferred for rent, where there are any judgments against the person or property so distrained.

3. SEC. III. In no case a preference shall be given to persons distraining for rent, where there are any judgments against the person or property so distrained.

Tenant refusing to give possession, liable to double Rent.

4. SEC. IV. Where any tenant shall refuse to give possession of the premises at the end of his lease, it shall be lawful for the person leasing the same to demand of such tenant, monthly, double the sum that the same was leased for, and may recover the same at the expiration of every month; or in the same proportion for a longer or shorter time, by distress, in manner pointed out as aforesaid.

Lessor may re-enter, etc.

5. SEC. V. If any person leasing or renting land, house or houses, shall fail to pay the rent, at the time the same shall become due, it shall and may be lawful for the lessor, immediately thereafter, to enter and retake possession of the premises so by him leased or rented.—[*For mode of proceeding, see 7.*]

Interest on contracts for Rent.

Actions liable at first term.

Not more than one continuance.

6. SEC. VI. All contracts for rents, whether verbal or in writing, shall bear interest from the time the same shall become due; any law, usage or custom, to the contrary notwithstanding. And all actions commenced in any of the courts of this State, for the recovery of rent in arrear, shall be tried at the term to which the same shall be returnable, unless good cause shall be shown for the continuance thereof; nor shall any such action be continued more than one term, at the instance of either party. Any law to the contrary notwithstanding.

AN ACT to amend the Rent Laws of this State.—*Approved Dec. 24, 1827.*

Proceedings ag't Tenant who holds over and refuses to deliver possession, etc.

7. SEC. I. From and after the passing of this act, it shall and may be lawful, upon the expiration of any lease, or time for which lands have been rented, which are now in existence, or have already expired, or which shall hereafter exist, where the tenant or his sub-tenant holds over, and where the owner of the rented property, or his agent or representative, shall desire to have possession of the same, to demand of the tenant or tenants, the possession of the rented property, and in case of refusal on the part of the tenant, or omission on his, her or their part, to deliver possession, it shall and may be lawful for the owner thereof, or by his or her agent or representative, to go before the judge of the superior court, or any justice of the inferior court, or justice of the peace, and make oath that the lease or term of time for which the land was rented has expired, and that the tenant refuses, omits or neglects to give possession; it shall be the duty of the person before whom the oath is made, to issue or grant a warrant or process, directed to the sheriff or his deputy, requiring or commanding him to deliver to the owner, his agent or representative, peaceable, full and quiet possession of the rented premises,

removing the tenant or tenants, with his property found thereon, belonging to such tenant or tenants, therefrom.

8. SEC. II. When the tenant shall declare, on oath, that his lease, whether written or verbal, is not expired, or that he does not hold the premises, either by lease or rent, from the said person who has made the said oath, or by any one holding under him or them, by rent or lease, he shall not be removed from the possession of the said premises, but the sheriff shall return the proceedings to the next superior court of the county where the land lies, and the fact be there tried, and if determined against the tenant or tenants, he shall pay double the rent received; and the person making the said oath, shall be entitled to a writ of possession, to be issued from and under the directions of the said superior court; directed to the sheriff or his deputy, who shall give possession of the premises, as prescribed in the first section of this act.

Defence how made, and where tried.

Writ of Possession to issue.

9. SEC. III. The sheriff, for executing the process aforesaid, shall be allowed the sum of three dollars, which amount shall be paid by the tenant, and his goods levied on for that purpose.

Sheriff's fee.

AN ACT to amend the Rent Laws of this State.—*Approved Feb. 18, 1854.*

10. SEC. I. *Be it enacted*, That from and after the passage of this act, the provisions of the act entitled "an act to amend the Rent Laws of this State," approved December 24, 1827, be so extended as to embrace the cases of the vendors [*vendees*] of the original lessor or owner, from whom the land was rented, so that the oath of such vendee, his agent or attorney-in-fact or at law, shall have the same effect as that of the vendor. And the tenant shall be required to deny, on oath, holding under the vendor of affiant, in addition to the oath now required; and all the proceedings thereafter, shall be as now set forth by law.

Act of 1827 extended to vendee of original lessor.

Additional oath required of the Tenant

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to define the liability of [*for*] Rent, to levy and sale. And to protect the rights of owners of land, in this State.—*Approved Feb. 14, 1854.*

Portion of crop reserved as Rent, not liable to levy and sale; provided the contract be in writing.

11. SEC. I. *Be it enacted*, That from and after the passage of this act, when any person shall rent any farm or farms, land or lands, in this State, and agree to pay as rent for the same, a portion of the crop or crops, raised on said farm or lands, the said portion so agreed to be paid to the land-owner or land-lord, for rent, as aforesaid, shall not be liable to be levied on and sold, by virtue of any process, attachment or execution against the tenant; but the said portion of the crop or crops, so received [*reserved*] or agreed to be paid to the owner of the land for the rent thereof, shall be the property of the owner of the land: *Provided*, the contract for rent is in writing, and the rent does not exceed one-half of the crop. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to amend the several Rent Laws of this State.—*Approved Feb. 28, 1856.*

12. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall be lawful for distress warrants for rent, to issue, as well on the oath of the agent or attorney of the party claiming rent, as of the said party in person; and whether such claim for rent be made under the general, or any local rent-laws of this State.

Agent or Attorney may have Warrant.

SEC. II. [Repeals conflicting laws.]



## FORMS UNDER THE ACT OF 1811.

*Affidavit of Person Claiming Rent.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
     Houston County. } Justice of the Peace, in and for said County,  
*John Doe*, who being duly sworn, saith that *Richard Roe*, of said County, is justly indebted to deponent, the sum of *thirty* dollars, besides interest for Rent, which sum is past due, and unpaid.

Sworn to and subscribed,  
 before me, this *May 1*, 1859. }  
     *James Mack, J. P.*

JOHN DOE.

NOTE.—The Affidavit may be made by the owner of the Land, his Agent, or Attorney.  
 —See the Act of 1856.

*Distress Warrant for Rent.*

STATE OF GEORGIA, }  
     Houston County. } *To any lawful officer to execute and return.*

Whereas, *John Doe* hath, *this day*, appeared before the undersigned, a Justice of the Peace in and for said County, and made oath that *Richard Roe*, of said County, is justly indebted to him, deponent, the sum of *thirty* dollars, besides interest, for Rent, which is past due and unpaid; these are, therefore, to authorize and command you, that you levy of the goods and chattels, lands and tenements of the said *Richard Roe*, a sufficiency to make the sum of *thirty* dollars, the principal debt, with interest on the same from the *first day of January last*, and the further sum of *one dollar*, cost for this warrant, and the further sum of all future cost. And have you the said sums at our Court, in *Perry*, in and for the 619th district, G. M., on the *fourth Saturday in June next*, to render to said *John Doe*, his principal, interest and costs. And have you, then and there, this writ, with your actings and doings thereon.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—The act of 1856, extends the jurisdiction of Justices' Courts to sums of fifty dollars; there being no exception to the jurisdiction, demands of that amount, for Rent, may be enforced by Distress Warrants issued by Justices of the Peace.

*Constable's Advertisement.*

STATE OF GEORGIA, } On the *fourth Saturday in June next*, will be  
     Houston County. } sold, at the Court-House door, in and for the  
 619th District, G. M., *one Bay Horse, about eight years old*; levied on as the property of *Richard Roe* to satisfy a Distress Warrant, for Rent, in favor of *John Doe* against said *Richard Roe*. Amount due, *thirty* dollars principal, besides interest and cost. This *May 1*, 1859.

JOHN JACOBS, Constable.

NOTE.—The property distrained may be claimed by a third person; in such case, the claim is made in the ordinary way. See Title Claim. Should the Defendant deny the facts in the Plaintiff's Affidavit, (which must be done under oath,) he must give a Bond of Indemnity.

*Affidavit of the Defendant.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
*Houston County.* } of the Justices of the Peace in and for said  
 County, *Richard Roe*, who being sworn saith, that a Distress Warrant  
 for the sum of *thirty* dollars, besides interest and cost, issued in favor  
 of *John Doe* against deponent, and levied on a *Bay Horse*, the property  
 of deponent, is proceeding against deponent illegally, for that *no part*  
 of the rent for which said Warrant issued is yet due.

Sworn to and subscribed,  
 before me, this *May 10*, 1859. }  
*James Mack, J. P.*

RICHARD ROE.

*Bond of Indemnity given by the Defendant.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *John Jones*  
*Houston County.* } as security, both of the County and State afore-  
 said, acknowledge ourselves held and bound to *John Doe*, of said  
 County, in the sum of *sixty* dollars; subject to the following con-  
 dition—

The condition of the above obligation is as follows—

Whereas, a Distress Warrant, issued in favor of *John Doe* against  
 said *Richard Roe*, for the sum of *thirty* dollars, besides interest and  
 costs, returnable to the Justices' Court, to be holden in and for the  
 619th District, G. M., on the *fourth Saturday in June next*, has been  
 levied on a certain *Bay Horse*, the property of said *Richard Roe*; against  
 which Distress Warrant said *Richard Roe* has filed his affidavit, deny-  
 ing that *any portion* of the Rent distrained for is due. Now, should  
 said *Richard Roe* well and truly pay the eventual condemnation money  
 in said case, provided it should be adjudicated against him, and all  
 costs incurred thereby, then this obligation to be void; otherwise, of  
 force. This *May 10*, 1859.

Approved—  
*John Smith, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
 JOHN JONES, *sec'ty.* [L. S.]

NOTE.—The levying officer, when the above Bond is filed, should deliver the property  
 to the Defendant, without requiring a Forthcoming Bond, or other proceeding.

## PROCEEDINGS UNDER THE ACT OF 1827.

*Affidavit of Land-Lord.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
*Houston County.* } of the Justices of the Peace in and for said County,  
*John Doe*, of said County, who being sworn saith, that he is the *owner*  
 of lot of land number *forty-nine*, in the *tenth* district of said County;  
 that he *verbally* leased said lot of land and its appurtenances, to *Richard*  
*Roe*, of said County, for the year eighteen hundred and *fifty-eight*; that  
 said *Richard Roe* is the *tenant* of deponent; that said lease expired on  
 the *thirty-first* day of *December last*: that deponent desires to have  
 possession of said premises; that he has demanded possession of said  
 premises from said *Richard Roe*, who is holding over, and that said



*Richard Roe neglects and refuses to deliver possession of said premises to deponent.*

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.* }

JOHN DOE.

NOTE.—The above Affidavit may be made by the owner of the Land, or his Agent, or Representative.

*Process issued by the Justice of the Peace.*

STATE OF GEORGIA, }  
*Houston County.* } *To the Sheriff of said County and his deputy.*

Whereas, I have received information on the oath of *John Doe*, of said County, that he is the *owner* of lot of land number *forty-nine*, in the *tenth* district of said County: that he *verbally* leased said lot of land and its appurtenances to *Richard Roe* of said County, for the year eighteen hundred and *fifty-eight*; that said *Richard Roe* is the *tenant* of deponent; that said lease expired on the *thirty-first day of December last*; that deponent desires to have possession of said premises; that he has demanded the possession of said premises from said *Richard Roe*, who is holding over, and that said *Richard Roe neglects and refuses* to deliver possession of said premises to deponent; these are, therefore, to command and require you, forthwith, to remove said *Richard Roe*, with his property found thereon, from said lot of land, and to deliver to said *John Doe*, full and quiet possession thereof. Herein fail not.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—If there be no other proceeding, the Sheriff must proceed and execute the above process, without delay; but the defendant has the right to file the following Affidavit, in which case the proceedings are stayed, and the papers returned to the next Superior Court of the County in which the land lies; which Court determines the facts.

*Affidavit of the Person in possession.*

STATE OF GEORGIA, }  
*Houston County.* } Personally appeared before the undersigned,  
a Justice of the Peace, in and for said County,  
*Richard Roe*, who being sworn saith, that *John Doe* is proceeding against him, deponent, (as tenant of him, said *John Doe*,) for the possession of lot of land number *forty-nine*, in the *tenth* district of said County; that deponent does not hold the premises either by lease or rent, from said *John Doe*, either as the *tenant or sub-tenant* of said *John Doe*, or any one holding under him, by rent or lease.

Sworn to and subscribed,  
before me, this *May 1*, 1858.  
*John Jones, J. P.* }

RICHARD ROE.

NOTE.—The statute specifies two cases in which the foregoing Affidavit may be made, to wit, 1. "When the tenant shall declare on oath, that his lease, whether written or verbal, is not expired." 2. "Or that he does not hold the premises, either by lease or rent," from the person proceeding against him, "or by any one holding under him or them."

*Writ of Possession.*

STATE OF GEORGIA, }  
Houston County. } To the Sheriff of said County—Greeting.

Whereas, an issue was presented at our Superior Court last past, between *John Doe*, who claimed to be the *owner* and lessor of lot of land number *forty-nine*, in the *tenth* district of said County, and *Richard Roe*, who admitted being in possession of said lot of land, but denied that he was either the *tenant* or *sub-tenant* of said *John Doe*. And whereas, said issue was determined in favor of said *John Doe*, whereby he is entitled to the possession of said lot of land; therefore, you are hereby commanded forthwith to proceed to remove said *Richard Roe*, with his property found thereon, from said lot of land, and to put said *John Doe* in full and quiet possession thereof. And have you at our next Superior Court, this writ, with your actings and doings thereon.

Witness, the honorable *Henry G. Lamar*, Judge of said Court, this June 25, 1859.

WILLIAM H. MILLER, *Clerk*.

NOTE.—The Clerk may, should he prefer it, include in the Writ of Possession, a clause for the Costs, (which are double, by the statute,) or he may issue a *fi. fa.* for the Costs, separate and apart from the Writ of Possession.

NOTE.—For the Act of 1854, providing for “Ejecting Intruders from the possession of Lands and Tenements,” see title “Possessory Warrant.”

## CHAPTER VIII.

### INSOLVENT DEBTOR.

AN ACT to abolish Imprisonment for Debt, on certain conditions herein set forth; and for other purposes.—*Approved Dec. 11, 1858.*

1. SEC. I. *Be it enacted*, that from and after the passage of this act, no *capias ad satisfaciendum* shall issue against the body of any defendant, from any court of this State, until the plaintiff, his agent or attorney, shall first have filed an affidavit in the clerk's office of the court in which judgment has been obtained; or with the justice of the peace by whom the same may have been rendered, stating that he has just cause to believe that the defendant has money or property which cannot be reached by the *fieri facias*, (other than such as is allowed by law;) or that the defendant has property which is beyond the jurisdiction of the court, in which said judgment has been rendered. The affidavit must state of what the property consists, particularly describing the same.

Debtor not to be arrested upon *ca. sa.* but after affidavit made by Plaintiff.

2. SEC. II. That when a defendant being [*is*] arrested under the provisions of the first section of this act, he may file a schedule, in the clerk's office of the inferior court, and take the oath now prescribed by law, for the benefit of honest debtors, by giving to the plaintiff, his agent or attorney, three days' notice of his intention to do the same; three justices of

Defendant may file schedule, and take the oath, etc.



Issue may be tendered, what it must contain. Trial of issue. Continuance allowed, but upon terms. Jury finding for the Defendant. Defendant failing to appear, judgment against him. Sheriff's fee for summoning jury. Repealing section.

the said court shall be sufficient to administer the oath. Plaintiff may tender an issue of fraud, in which he shall plainly set forth all the facts in the case which he expects to prove, and particularly describing the property which he may allege to have been left out of the schedule filed by the defendant. Upon this being done, the justices of the inferior court may cause a jury to be summoned instanter, and proceed, at once, to the trial of the issue formed. If either party shall make it appear to the court that they are not ready for trial, the cause may be continued to such time as the court, in its discretion, may deem necessary to enable the parties to prepare for the trial of the same; if the continuance be at the instance of the plaintiff, he shall make oath that the facts which he has set forth in the issue tendered, are true; when continued at the instance of the defendant, he shall give bond and security, as is now required by law, for his appearance to take the insolvent debtors' oath, at the final termination of the cause.

In the event that the jury find for the defendant, he shall be permitted to take the oath, by delivering to the sheriff, or his deputy, all the property described in the schedule which he has filed. Should the defendant fail to appear at the time appointed by the court for the trial of the issue, the court may enter up judgment upon the defendant's appearance bond, in favor of the plaintiff, for the principal, interest and cost: *Provided*, it does not appear that the defendant is absent from providential cause.

3. SEC. III. That the sheriff shall be paid the sum of two dollars for summoning the jury under the provisions of this act, to be collected out of the party cast in the trial.

SEC. IV. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

NOTE.—The foregoing statute revolutionizes the entire subject upon which it is made; it sweeps away almost every vestige of the laws heretofore made on the subject of Insolvent Debtors.

It will be observed that the statute creates a tribunal for the trial of cases, (the Inferior Court, which may hear these cases in Chambers,) whatever Court the *Capias* may have issued from. The whole proceeding under this statute is new, and heretofore unknown in judicial proceedings, in Georgia.

### *Capias ad Satisfaciendum.*

STATE OF GEORGIA, }  
Houston County. } *To all and singular, the Sheriffs of said State.*

We command you, that you take the body of *John Doe*, if to be found, and him safely keep, so that you have his body before the *Superior* Court, to be held in and for said County, on the *fourth* Monday in *October* next; then and there to satisfy *Richard Roe*, the sum of *five hundred* dollars; which lately, in our said Court, said *Richard Roe* recovered against said *John Doe*, as well for damages by reason of the non-performance of certain promises by the said *John Doe*, before that time made, as for his costs and charges, by him said *Richard Roe*, in his suit in that behalf expended, whereof the said *John Doe* is convicted and liable, as to us appears of record; besides your fees for this service. Herein fail not, and have you then and there this Writ.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this May 1, 1859.*

WILLIAM H. MILLER, *Clerk.*

*Affidavit of the Plaintiff.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
 Houston County. } of the *Justices of the Peace*, in and for said County,  
*Richard Roe*, who being sworn saith, that judgment has been rendered  
 in the *Superior Court*, of said County, in his favor, for the sum of *five*  
*hundred dollars*; that deponent has just cause to believe that said  
*John Doe*, has in the hands of *Rufus Felder*, of the State of *South Caro-*  
*lina*, the sum of *six hundred dollars*, which cannot be reached by the  
 writ of *fiery facias*, (other than such as is allowed by law;) wherefore,  
 he prays the issuing of the writ of *capias ad satisfaciendum* against the  
 said *John Doe*.

Sworn to and subscribed, }  
 before me, this *June 1*, 1859. }  
*James Mack, J. P.*

RICHARD ROE.

*Schedule filed by the Defendant.*

STATE OF GEORGIA, } The following is a full and fair Schedule of all  
 Houston County. } the property and effects, of which I am entitled  
 to, or of which I am possessed, to wit:

1 old two-horse Wagon, worth	.	.	.	\$5,00
&c.,	&c.	&c.,	&c.	

This *June 2*, 1859.

JOHN DOE.

*Entry on the Schedule by the Clerk.*

Filed in Office, this *June 2*, 1859.

JOHN H. KING, *Clerk I. C.*

NOTE.—The Schedule must be filed in the office of the Clerk of the Inferior Court.

*Notice to the Plaintiff.*

*Richard Roe*—You are hereby notified that I, being arrested upon a  
*Capias ad Satisfaciendum*, issued at your instance, have filed my  
 Schedule in the Office of the Clerk of the Inferior Court of *Houston*  
 County, and shall apply to take the oath prescribed for Honest  
 Debtors, in conformity with the act, in such case made and provided.  
 This *June 2*, 1859.

JOHN DOE.

NOTE.—This Notice must be served on the Plaintiff, his Agent or Attorney, personally,  
 three days before the day on which the Defendant proposes to take the oath. And the  
 Defendant may notify his other Creditors, if he thinks proper.

*Issue tendered by the Plaintiff.*

IN CHAMBERS, *June 20*, 1859.—And now comes *Richard Roe*, by  
 his attorney, *Clinton Duncan*, and says, that said *John Doe* is not fairly  
 insolvent; that said *John Doe* has, in his own right, in the hands of  
*Rufus Felder*, who resides in the State of *South Carolina*, the sum of  
*six hundred dollars*, in money, which is not included in the Schedule



filed by said *John Doe*. All which the said *Richard Roe*, prays may be inquired of by the Court and country, &c.

CLINTON DUNCAN, *Att'y pro R. R.*

*Issue Joined.*

And the Defendant, *John Doe*, doth the like.

SAMUEL D. KILLEN, *Att'y pro J. D.*

NOTE.—It is clear that the Justices of the Court have the right of sitting down the trial for a particular day. And the Jury may be summoned of persons convenient. The parties should be informed of the day of trial.

*Continuance of the case by the Plaintiff.*

You do solemnly swear that the facts which are set forth in the Issue tendered by you, (in the case you now propose to continue,) are true.

*Continuance of the case by the Defendant.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Charles Smith*  
*Houston County.* } as security, both of the State and County afore-  
 said, acknowledge ourselves held and bound unto *Richard Roe*, in the  
 sum of *one thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* has been arrested by virtue of a writ of *capias ad satisfaciendum*, issued at the instance of *Richard Roe*. And whereas, said *John Doe* has filed his schedule, and proposes to take the oath prescribed in the case of honest debtors. And whereas, said *John Doe* moves to continue the trial of said cause, which is set down to be tried on the *first* day of *July* next; now, should said *John Doe*, well and truly be and appear, in the town of *Perry*, before the Justices of the Inferior Court, on the *first* day of *July* next; and then and there, be prepared for the trial of the Issue formed in said case; and then and there, stand to and abide by such proceedings as may be had by the Court, in relation to his taking the oath for the benefit of honest debtors, then this obligation to be void; otherwise, of force. This *June 20, 1859.*

In open Court—  
*John H. King, Clerk.*

JOHN DOE. [L. S.]  
 CHARLES SMITH. [L. S.]

*Oath of the Jury.*

You shall, well and truly, try this Issue of Fraud or not Fraud, between *Richard Roe*, Creditor, and *John Doe*, Debtor; and a true verdict give, according to evidence—so help you God.

*Verdict of the Jury.*

We, the Jury, find the Issue in favor of *John Doe*.

MARCUS KUNZE, *Foreman.*

*Judgment of the Court.*

Whereupon, it is adjudged and ordered by the Court, that *John Doe* is lawfully insolvent. And that the Oath prescribed for the benefit of Honest Debtors, be now administered; and said *John Doe*, go without a day. Judgment signed, this *July 1, 1859.*

SAMUEL D. KILLEN, *Att'y pro. J. D.*

*Oath of Insolvent Debtor.*

I, *John Doe*, do solemnly swear, (or affirm, as the case may be,) in presence of Almighty God, that I am not possessed of any real or personal estate, debts, credits or effects, securities or contracts whatsoever, my wearing apparel, bedding for myself and family, and the working tools or implements of my trade or calling, [*and such other property as is exempted from levy and sale, by law,*] together with the necessary equipments for a militia soldier excepted, other than are contained in the Schedule now delivered. And that I have not, directly or indirectly, since my imprisonment, or before, sold, leased, assigned or otherwise disposed of, or made over in trust, for myself or otherwise, any part of my lands, estates, goods, stock, money, debts, securities or contracts, whereby any money may hereafter become payable, or any real or personal estate, whereby to have or expect any benefit or profit, to myself, my wife or my heirs—so help me God.

In open Court, this *July 1, 1859,*

*John H. King, Clerk.*

JOHN DOE.

NOTE.—This Oath must be taken and subscribed in Open Court.

*Order of Discharge.*

*John Doe*, having taken and subscribed the Oath prescribed for Insolvent Debtors, *Madison Marshall*, Sheriff, is hereby directed and required to discharge said *John Doe*, forthwith, from custody; so far as said custody has been caused on account of the matter contained in the proceedings of this case. For which discharge this order shall be his sufficient warrant.

NOTE.—All the proceedings in the case must be recorded by the Clerk.

NOTE.—The following is a list of Articles exempt from levy and sale by the several statutes—Act of 1822, two Beds, common Bedsteads, Spinning-Wheel and two pair of Cards, a Loom, and Cow and Calf, common Tools of his trade, and ordinary Cooking-Utensils, and ten dollars' worth of Provisions. Act of 1834, the Family-Bible. Act of 1841, twenty acres of Land, and the additional amount of five acres for each of his or her children, under the age of fifteen years; also, one Horse or Mule; also, ten head of Hogs and thirty dollars' worth of Provisions. Act of 1843, fifty acres of Land. Act of 1818, Equipments of Militia-Soldier and Troopers' Horse. Act of 1801, Wearing-Apparel. Act of 1845, two hundred dollars' worth of Real Estate, in a city, town or village. Act of 1852, one Ox, or yoke of Oxen, or Steers, and Cart or Wagon; where said head of family owns no Horse. Act of 1857, one Farm-Horse or Mule, without regard to value.

AN ACT to exempt from sale, for Debts contracted after a given time, certain Articles, chiefly necessary for the subsistence of the Debtor's Family.—  
*Approved Dec. 23, 1822.*

*Whereas*, it does not comport with justice or expediency, to deprive innocent and helpless women and children, of the means of subsistence—



Articles exempt from levy and sale.

4. SEC. I. *Be it therefore enacted*, That from and after the first day of March next, the following articles, be exempt from levy and sale, on account of any debt contracted after that day, to wit, two beds and bedding; common bedsteads; a spinning wheel, and two pair of cards; a loom, and cow and calf; common tools of his trade; and ordinary cooking utensils; and ten dollars' worth of provisions.

Schedule of exempted Articles to be made out by levying officer and recorded by the Clerk.

5. SEC. II. In all cases where any debtor shall have the benefit of the above-recited act extended to him, it shall be the duty of the officer levying the execution, to make out a schedule of the articles so exempted from seizure and sale, and return the same to the clerk of the inferior court of said county, whose duty it shall be to record the same in a book kept by him for that purpose; then the above property shall be alienated and vested in the inferior court [see 21,] to be appropriated to the benefit and use of said family, so long as the defendant shall remain insolvent.—[*See next Act.*]

SEC. III. All laws and parts of laws, so far as they militate with this act, are hereby repealed.

AN ACT to amend an act to exempt from sale for debts contracted after a given time, certain Articles, chiefly necessary for the subsistence of the Debtor's Family.—*Approved Dec. 22, 1834.*

Bible exempt from sale.

6. From and after the passage of this bill, in addition to the articles exempt from sale in the above-recited act, shall be added, the Family Bible of all debtors who may be entitled to the benefits of the said Act.—[*See next Act.*]

SEC. II. [Repeals all repugnant laws.]

AN ACT to alter and amend an act entitled "an act (passed the 23d of December, 1822,) to exempt from sale for debts contracted after a given time, certain Articles, chiefly necessary for the subsistence of the Debtor's Family," so far as to extend the same privileges and benefits to Widows and their Families, during their Widowhood, as are extended to Debtor's Families, in the said before-recited act.—*Approved Dec. 22, 1835.*

Debtors' acts extended to Widows.

7. From and after the passage of this act, the privileges and benefits extended to debtors' families in the above-recited act, shall be and they are hereby extended to all widows and their families, during their widowhood, under the same rules, regulations and restrictions as govern the articles exempted for the use of debtors' families, in the before-recited act.—[*See next Act.*]

SEC. II. [Repeals all laws conflicting with this.]

AN ACT to exempt from levy and sale under execution, certain property therein mentioned.—*Approved Dec. 11, 1841.*

*Whereas*, it does not comport with the principles of justice, humanity or sound policy, to deprive the family of an unfortunate debtor of a home, and the means of an honest subsistence—

Land of Insolvent Debtor exempt from levy and sale.

10. SEC. I. *Be it therefore enacted*, That every white citizen of this State, male or female, being the head of a family, shall be entitled to own, hold and possess, free and exempt from levy and sale, by virtue of any judgment, order or decree of any court of law or equity in this State, founded on any contracts made after the first day of May next; or any process emanating upon the same, twenty acres of land, and the additional sum of five acres for each of his or her children under the age of fifteen: *Provided*, that the same or any part thereof be not the site of any city, town or village, [but see 16,] or of any cotton or wool factory, saw or grist-mill, or of any other machinery propelled by water or steam. Also, one horse or mule, the value of which shall not exceed fifty dollars. Also, ten head of hogs and thirty dollars' worth of provisions.—[*See next Act.*]

A Horse and Provisions.

11. SEC. II. When any head of a family shall own a greater quantity of

land than that exempted from levy and sale by the provisions of the first section of this act, that he or she shall procure the county-surveyor to lay off the number of acres so exempted so as to include the dwelling-house and improvements of the original tract, if there be any thereon: *Provided*, that the value of said dwelling-house and improvements shall not exceed two hundred dollars—the value to be ascertained and certified to by three valuing agents, who shall be appointed as follows, one by the plaintiff in execution, or his or her attorney or agent; one by the defendant in execution, and one by a justice of the peace in the district where the said dwelling-house and improvements are. And he or she shall designate in writing, to the sheriff or other officer in whose hands the process directing a levy and sale may be, the boundary so laid off, and it shall not be lawful for such sheriff, or other officer, to levy on or sell the tract so designated.

County-Surveyor to lay off exempted Land. How appraised.

Shall not be levied on or sold.

12. SEC. III. No land shall be exempted from levy and sale under the provisions of this act, which derives its chief value from other cause than its adaptation to agricultural purposes.

Exception.

13. SEC. IV. Whenever any male head of a family shall hold land under the provisions of this act, that no sale that he may make of the same, or any part thereof, shall be good and valid in law, unless his wife, if he have any, shall of her own choice and free will, sign the deed of such sale, together with her husband.—[*See next Act.*]

Husband and wife must join in the Deed of Conveyance.

SEC. V. All laws and parts of laws militating against the true intent and meaning of this act, be and the same are hereby repealed.

AN ACT to amend “an act to exempt from levy and sale, certain property therein mentioned,” assented to 11th December, 1841, and to exempt certain property from levy under Attachment.—*Approved Dec. 22, 1843.*

*Whereas*, by the provisions of the first section of the above-recited act, twenty acres of land for the head of each family, and the additional sum of five acres for each child under the age of fifteen years, is exempt from levy and sale, which does not sufficiently protect the citizens of this State, in an interest in said land; for remedy whereof—

14. SEC. I. *Be it enacted*, That from and after the passage of this act, the amount of fifty acres of land to the head of each family, be and the same is hereby declared to be exempt from levy and sale, by virtue of any judgment, order or decree of any court of law or equity in this State, founded on any contracts made after the first day of January next, except the same shall be for the purchase money of said land, for the payment of which, said land shall be bound.

Fifty acres of land exempt for the head of each family.

15. SEC. II. All property of any kind exempt under this act, or any former one, from levy and sale under execution, founded upon any judgment or decree, shall under like circumstances, be exempt from levy under any attachment.

Also, from Attachment.

SEC. III. The provisions of the first section of the before-recited act, and all other laws and parts of laws, militating against the provisions of this act, be and the same are hereby repealed.—[*See next Act.*]

AN ACT to extend the provisions of an act, assented to December 11, 1841; and also, an act assented to December 22, 1843, so as to exempt from levy and sale, certain Property therein mentioned.—*Approved Dec. 29, 1845.*

16. SEC. I. *Be it enacted*, That the provisions of the act to exempt from levy and sale under execution, certain property therein mentioned, assented to December the eleventh, eighteen hundred and forty-one; and the act amending the same, assented to on the twenty-second December,

\$200 value of property, in City, Town or Village, exempt.



eighteen hundred and forty-three, be extended to the citizens of any city, town or village in this State, and to exclude [*include*] real property in such places, not exceeding in value, two hundred dollars.—[*See next Act.*]

SEC. II. [Repealing section.]

AN ACT to amend an act entitled “an act to exempt from levy and sale under execution, certain Property therein mentioned, assented to December 11, 1841.” And to extend the provisions of the same.—*Approved Jan. 22, 1852.*

Oxen and  
Cart exempt  
from levy and  
sale.

19. SEC. I. *Be it enacted*, That every white citizen of this State, male or female, being the head of a family, (in addition to the property mentioned in the above-recited act,) shall be entitled to own, hold and possess, free and exempt from levy and sale, by virtue of any judgment, order or decree of any court of law or equity in this State, founded on any contracts made after the first day of May next; or any process emanating from the same, one ox, or yoke of oxen, or steers; and cart or ox-wagon, where said head of family owns no horse. Subject to all the provisions of the before-recited act.—[*See next Act.*]

AN ACT to amend the several acts in relation to the Exemption of certain property from levy and sale; and to provide a mode of securing said property to the Wife and Children, or Wife, or Child, or Children.—*Approved March 5, 1856.*

Schedule of  
Exempted  
Property must  
be presented  
to levying-  
officer.

20. *The General-Assembly of the State of Georgia do enact as follows:*—That in all cases hereafter, where any *fi. fa.* or attachment shall be issued from any of the courts of this State, the defendant or defendants in said *fi. fa.* shall be authorized to present to the levying-officer, a schedule of such property as may be exempt from levy and sale. And upon failure of the defendant to do so, then the wife of the defendant, or any one of the children, or any one who shall appear as the next friend of said wife, or child, or children, shall be authorized to do so: *Provided*, that said next friend shall give notice under oath, that the same is done in good faith; and when this shall be done, if the levying-officer shall levy and sell said property, he shall be liable to be sued for trespass.

Next friend  
must make  
oath, etc.

Property vest-  
ed in Wife  
and Children.

21. SEC. II. That when the said property shall be claimed as aforesaid, the same shall be subject alone to the use of the wife of defendant, and be by her used during her life-time, and at her death to be for the use of all her children under the age of sixteen years.—[*See next Act.*]

SEC. III. [Repeals conflicting laws.]

AN ACT to amend “an act to exempt from levy and sale, under executions, certain property therein mentioned.” Assented to December 11th, 1841.—*Approved Dec. 22, 1857.*

One Horse or  
Mule.

22. SEC. I. *Be it enacted*, That from and after the passage of this act, the aforesaid act be so amended as to permit every white citizen of this State, male or female, being the head of a family, to hold and possess, free from levy and sale, one farm horse or mule, without regard to the value of the same.

AN ACT to amend the Insolvent Laws of this State.—*Approved Feb. 18, 1854.*

Disposition of  
remainder or  
reversion.

23. SEC. I. *Be it enacted*, That whenever any insolvent, under the insolvent laws of this State, shall set forth in his schedule any interest in remainder or reversion, the court shall order the same to be assigned as other property contained in the schedule of said insolvent, to some suitable person, to collect for the benefit of the creditor or creditors in interest.

Which assignee shall advertise said interest in remainder or reversion, in the same manner as sheriffs, and shall expose the same to public sale, in the same manner; and make such deed or conveyance of the same as sheriffs are authorized to do; and shall account for the proceeds in the same manner as is now required of assignees by the insolvent law.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to prevent Assignments or Transfers of property to a portion of Creditors, to the exclusion and injury of the other Creditors; of persons who fail in trade, or who are indebted at the time of such Assignment or Transfer.—*Approved Dec. 19, 1818.*

*Whereas*, a practice of selecting particular creditors by Assignments and Transfers of property, made by persons indebted, and thereby excluding or defrauding other *bonâ fide* creditors, of their just claims on the estate of insolvent debtors, is contrary to the first principles of equity and justice; to prevent the mischief therefore—

24. *Be it enacted*, That any person or persons, unable to pay his, her or their debts, who shall at any time hereafter make any assignment or transfer of real or personal property, stock in trade, debts, dues or demands, (in trust,) to any person or persons, in satisfaction or payment of any debt or demand, or in part thereof, for the use and benefit of his, her or their creditor or creditors; or for the use and benefit of any other person or persons, by which any creditor of the said debtor shall or may be excluded from an equal share or portion of the estate so assigned or transferred, such assignment, transfer, deed or conveyance, shall be null and void, and considered in law and equity, as fraudulent against creditors: *Provided nevertheless*, that nothing contained in this act, shall prevent any person or persons in debt, from *bonâ fide* and absolutely selling and disposing of any part or the whole of his, her or their estate, so the same be free from any trust for the benefit of the seller, or any person or persons appointed by him, her or them.

Assignments of property to one Creditor, in trust, for the benefit of other particular Creditors, null and void.

Insolvent Debtor may, *bonâ fide*, transfer property.

AN ACT to abolish Imprisonment for Debt, so far as relates to Widows and *Feme Soles*.—*Approved Dec. 28, 1847.*

25. SEC. I. *Be it enacted*, That no widow or other *feme sole*, shall hereafter be arrested, imprisoned, or in any manner restrained, or deprived of her liberties, for or on account of any debt or demand against her, arising upon any contract made or entered into, after the passage of this act.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the relief of Honest Debtors.—*Approved Dec. 19, 1823.*

26. From and immediately after the passage of this act, when any debtor or debtors shall be taken upon any *capias ad satisfaciendum*, and shall be desirous of taking the benefit of the oath prescribed for the relief of insolvent debtors, or of rendering a full and fair schedule of his property, it shall and may be lawful for such debtor or debtors, to tender to the sheriff of the county, his lawful deputy, or any constable, marshal, or other officer by whom he, she or they may have been taken, a bond or bonds, payable to the party at whose instance the arrest was made, with good and sufficient securities, in twice the amount of the debt, conditioned for his appearance at the next term of the superior or inferior court, or any court of oyer and terminer and corporation court, in which said *capias ad*

Debtors when taken on *Ca. sa.* may give Bond and security, and file Schedule of his property.



*satisfaciendum* was obtained, (and if the same issued from a justices' court, then to the inferior court next to be held in and for said county;) then and there to stand to and abide by such proceedings as may he had by the court in relation to his, her or their taking the benefit of this act.

Defendant failing to appear, judgment on his Bond. . . Issue how formed and tried. And in case of failure to appear, judgment shall be entered up instanter, upon said bond against the principal and his securities, to be discharged upon the payment of the debt and cost. And when an execution issues thereon, the defendant in the *capias ad satisfaciendum* shall not be entitled to the benefit of this act: *Provided*, that if either of the parties to the said bond shall be desirous to have an issue made up and submitted to a jury, a jury shall be immediately impannelled to try such issue, and the plea of *non est factum* shall only be received upon the party making oath

Sickness good cause for continuance. to its verity: *And provided further*, that if it shall be made appear satisfactorily to said court that said debtor or debtors are prevented from attending court by sickness, or other sufficient cause, to be judged of by the court, the case shall be continued over to the next court, at which time the same proceedings shall be had as if he had appeared at the first term: *And provided further*, that if such debtor or debtors shall die in the meantime, it shall be an absolute discharge of such bond or bonds; *Provided nevertheless*, that when any debtor or debtors shall be taken as aforesaid, within twenty days before the sitting of said court, said bond shall be conditioned for his, her or their appearance at the succeeding term of the court aforesaid.

Death of Defendant discharges the Bond. Case when returnable. Party to be released. 27. SEC. II. Upon such debtor or debtors tendering such bond or bonds, it shall be the duty of such sheriff, deputy or constable, as the case may be, to release him, her or them from confinement or custody. Any law, usage or custom, to the contrary notwithstanding.

Security may surrender principal. 28. SEC. III. To enable the honest debtor the more easily to obtain the security required in the first section of this act, it shall be lawful for the said security, at the court to which the principal is bound to appear, to surrender in open court, said principal in discharge of the security. And for the purpose of making the surrender, the security is hereby authorized to exercise all the power which by law, special bail have over their principal.

Debtor to swear to the Schedule previously filed, and take the oath of insolvency. 29. SEC. IV. Upon the appearance of such debtor or debtors at the court to which he is bound to appear, it shall be lawful for him, her or them, either in person or by attorney, to move the court to be admitted to take the oath prescribed for the relief of insolvent debtors; or to swear to the schedule previously filed with the clerk of said court, agreeably to the provisions of this act, herein-after contained. And it shall be the duty of said court, upon such debtor or debtors making it appear to them, that at least ten days' notice has been given in writing, to his, her or their creditors, of the intention to avail him, her or themselves, of the benefit of this act, to administer the oath prescribed for the benefit of insolvent debtors; or to swear him, her or them, to the schedule as aforesaid, as the case may be; and to direct the clerk to make an entry of the same upon his minutes, which shall exempt the body or bodies of such debtor or debtors from imprisonment for debt, in all cases where notice may have been given to the creditors; which notices shall be filed with the clerk of

Issue of fraud may be made up and tried. said court: *Provided nevertheless*, that if any creditor or creditors shall suggest any fraud, or concealment of any property, money or effects, it shall be the duty of the court to direct an issue to be made up and tried by a jury, at the first term, before such debtor or debtors are sworn: *Provided further*, that if either of the parties shall be unprepared for the trial of such issue, the court may continue the same, under the same rules

Continuance allowed.



and regulations by which suits at law, are now continued. And if the said jury shall find that there is any fraud or concealment; or if said debtor or debtors shall fail or refuse to answer upon oath; or if said debtor or debtors shall fail to make it appear to the court, that he, she or they have given the necessary notice to the creditor or creditors at whose instance he, she or they may have been arrested, then and in that case, the said debtor or debtors shall be deemed in the custody of the sheriff, and the court shall adjudge that he, she or they be imprisoned, until a full and fair disclosure of all the property, money or effects be made by said debtor or debtors, and until he, she or they have given the necessary notice as aforesaid, to be judged of by said court.

Issue of fraud found against the defendant, he must be imprisoned, &c.

30. SEC. V. When any debtor or debtors taken upon any *capias ad satisfaciendum* as aforesaid, shall be desirous to render a full and fair schedule of his, her or their property and effects, he, she or they shall file the same with the clerk of the court at which he is bound to appear, at least ten days before the sitting of the court, at the sitting of which he proposes to avail himself of the benefit of this act. And that upon his being admitted to swear to the said schedule, the same proceedings shall be had thereon, as may be now had on schedules filed under the law now in force.

Notice must be given to Creditors.

31. SEC. VI. No person shall be imprisoned for debt upon any *capias ad satisfaciendum*, who will comply with the requisitions of this act, except in cases of fraud or concealment herein-before mentioned. Any law, usage or custom, to the contrary notwithstanding.—[See next act.]

No person to be imprisoned who complies with this act.

SEC. VII. [Repeals all conflicting laws.]

AN ACT in relation to Insolvent Debtors.—*Approved Dec. 27, 1845.*

32. *Be it enacted*, That when any debtor residing in any county, other than that in which a judgment may be against him, shall be arrested by virtue of a *capias ad satisfaciendum* issued thereon, and shall give bond in terms of the act for the relief of honest debtors, it shall be lawful for such debtor to deliver to the sheriff of the county in which he resides, any personal property, (other than choses in action,) specified in his schedule; which sheriff shall hold the same, subject to the order of the court from which said execution shall be issued, and shall give to said debtor a certificate of such delivery; which on being filed with his schedule, shall be sufficient to authorize the discharge of the debtor, on taking the oath prescribed, so far as relates to such property.

How a Debtor, arrested by Process from another county, may be discharged.

33. When any debtor, after having given bail, or security, on mesne or final process, shall be surrendered by his bail, or security, and committed by the sheriff to jail, it shall not be lawful for any court to discharge such debtor from custody, because of the jail-fees not being paid or secured, unless the sheriff or jailer shall give, at least, ten days' prior notice, in writing, to the plaintiff or his attorney, who shall be allowed that time within which to pay, or give security, for the jail-fees, and thereby prevent such discharge.

Debtor surrendered by Bail, how he may be discharged. Plaintiff must be notified previous to discharge.

AN ACT declaratory of the intention of the act entitled "an act for the Relief of Honest Debtors," approved on the 19th of December, 1823. And to allow persons arrested under mesne process the benefit of the same.—*Approved Dec. 15, 1855.*

*Whereas*, it has been held doubtful whether or not persons arrested under writs of *capias ad satisfaciendum*, after having taken the prison bounds, were entitled to the benefit of the act of the legislature of this State, entitled "an act for the relief of honest debtors," approved on the 19th December, 1823.

34. SEC. I. *Be it enacted, &c.* That all persons who may have been



Benefits of the arrested, or hereafter may be arrested, upon any writ of *capias ad satisfaciendum*, shall either before or after taking the bounds defined as prison-bounds, or not, shall be entitled to take the benefit of said act upon filing their schedule, and giving notice as is required by said act.

And also, to persons arrested on Bail Process. 35. SEC. II. That any person who has given bail in any civil suit, shall be entitled to the benefit of the act for the relief of honest debtors, upon giving notice, filing his schedule and appearing in court for that purpose. And on his appearance he shall be subject to be proceeded against in the same manner, as if he had been arrested and given bond under said act.

AN ACT to authorize the Justices of the Inferior Courts of this State, to discharge Insolvent Debtors confined by process, from any Court of this State whatever.—*Approved Dec. 10, 1803. [See next Act.]*

And whereas, it often happens that prisoners, debtors and criminals, are committed and sent to jails in other counties than those to which they belong, and in which they ought of right to be confined, to the great injury of the county to which they are so committed; as the criminals, in particular, are frequently left there without prosecution—

Bond to prosecute must be given. 36. SEC. II. *Be it therefore enacted*, That from and after the passing of this act, it shall not be lawful for any magistrate to commit a criminal to jail for any offence against the State, without first compelling the prosecutor to give bond and security to prosecute according to law.

Bond for maintenance and jail-fees must be given. 37. SEC. III. And in all cases where debtors shall be committed under any execution or mesne process, at the suit of any person residing out of the county or State, the agent or attorney of the plaintiff shall give like security for the maintenance and jail-fees of the defendant, the maintenance to be paid weekly. And in failure thereof, the defendant shall be discharged on application to the justices of the inferior court. And in like manner, when seamen are committed at the instance of their captains, who frequently leave them in jail, security shall be given to the jailer, before he shall receive such seamen, for their maintenance and jail-fees.

SEC. IV. The said act to carry into effect the seventh section of the fourth article of the constitution, so far as the same militates against this act, be and the same is hereby repealed.—*[See next Act.]*

AN ACT to amend an act, approved December the tenth, 1803, to authorize the Justices of the Inferior Courts of this State, to discharge Insolvent Debtors, confined by Process, from any court of this State whatsoever; so far as to amend the Caption of the same.—*Approved Feb. 23, 1850.*

Title of Act of 1803 amended. 38. SEC. I. *Be it enacted*, That the caption of said act, be so amended as to read as follows—"An act to authorize the Justices of the Inferior Courts of this State, to discharge Insolvent Debtors, confined by Process, from any Court of this State whatever. And to authorize Magistrates to require Bond to Prosecute in Criminal cases." And that the said act be as valid as if again enacted.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Bond for Maintenance and Jail Fees.*

STATE OF GEORGIA, } We, *John Doe*, principal, and *Richard Roe*, se-  
Houston County. } curity, acknowledge ourselves held and bound  
to *Charles Smith*, Jailer of said County, the sum of *five hundred dol-*  
*lars*, subject to the following conditions—



The conditions of the above obligation are these—whereas, *John Jones*, of said County, has *this day*, been arrested, by virtue of a writ of *capias ad satisfaciendum*, issued from the *Superior Court* of said County, in favor of said *John Doe* against said *John Jones*. And whereas, said *John Doe* resides out of the County of *Houston*, and said *John Jones* is about to be committed to the common Jail of said County: now, should the said *John Doe*, well and truly pay, or cause to be paid, the maintenance, (weekly,) of said *John Jones*, in said Jail, and the Jail Fees of said *John Jones*, then the above obligation to be void; otherwise, of force. This *May 1*, 1859.

Approved—  
*James Mack, J. P.*

JOHN DOE, *prin'l.* [L. S.]  
RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—The above Bond may be given by the Agent or Attorney of the Plaintiff.

AN ACT to extend to all persons Imprisoned for Debt, the privilege of Prison Bounds.—*Approved Dec. 22*, 1820.

39. Within six months from the passing of this act, the sheriffs of the several counties of this State, shall under the direction of the inferior courts of the counties where jails are built, lay off, or cause to be laid off, around the jails, in such manner as they may deem most convenient and proper, ten acres, [see 46.] And in the counties where no jails are yet built, it shall be the duty of the sheriff, under the direction of the inferior court in those respective counties, within three months after a jail is erected in the same and received, to lay off the same number of acres as is provided for in this act; which limits when so laid off in each case, shall be held and considered as prison bounds.

40. SEC. II. So soon as prison bounds are ascertained, in the manner herein-before pointed out, and any person shall be arrested and committed to jail by an officer, upon civil process, and the person so arrested and committed to jail, shall tender to the officer committing the said person to jail, a bond with good and sufficient security, in a sum of double the amount of the debt or demand for which he, she or they are committed to jail. Which bond the said officer so arresting is hereby authorized and required to take, with condition that if the person or persons so arrested and committed to jail, do at any time, without being legally discharged, pass or leave the boundaries so laid off and defined as prison bounds, such passage or departure of said bounds, shall be taken and considered as an escape and forfeiture of said bond. And the sheriff or other officer taking such bond and security, shall be bound, on the application of the plaintiff in such case, his attorney-at-law or in fact, to assign the same to the plaintiff, who may, upon such bond and assignment, commence an action for the breach of the same, against the principal or principals and his, her or their security or securities, at the same time; and shall recover against the principal or principals in said bond, and his, her or their security or securities, the amount of debt or demand, with interest and costs, for which the person or persons was or were arrested and committed to jail: *Provided nevertheless*, no person [so] arrested and committed to jail, shall have the benefit of such bounds for a longer term than six calendar months, at the instance of the same plaintiff.

Prison Bounds to be laid out.

Prisoners may have the Bounds upon giving Bond and Security.

Condition of the Bond.

Plaintiff may recover on Bond, in certain events.

How much Plaintiff may recover.

41. SEC. III. In case any sheriff, or other officer so arresting and committing a person or persons to jail, upon any civil process, shall refuse to receive such bond as is herein-before set forth, the officer so refusing, shall be subject to indictment for mal-practice in office. And in case the officer shall take insufficient security, he shall be held liable to the plaintiff, in the

Penalty on arresting officer for refusing to receive Bond when tendered.



several modes pointed out in the laws heretofore passed, prescribing the liability of sheriffs and other officers. And in case the arrest should be made by a coroner, he shall be held to all the liabilities that a sheriff would be, were the arrest made by him.—[*See next Act.*]

### *Bond for Prison Bounds.*

STATE OF GEORGIA, } We, *John Doe*, principal, and *Richard Roe*, secu-  
Houston County. } rity, acknowledge ourselves held and bound to  
*Madison Marshall*, Sheriff of said County, and his successors in office,  
the sum of *five hundred dollars*, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* has been arrested by said *Sheriff*, upon a writ of *capias ad satisfaciendum*, issued out of the *Superior Court* of said County, at the instance of *Charles Smith*. And whereas, the said *John Doe* desires to have the right of prison-bounds, as by law prescribed: now, should the said *John Doe*, well and truly keep within the bounds laid off and prescribed by the Sheriff and the Inferior Court, around the Jail of said County; and do not at any time, without being legally discharged, pass or leave said boundaries, so laid off and defined as prison-bounds, as aforesaid, then the above obligation to be null and void; otherwise of force. This *May 1*, 1859.

Approved,—  
*James Mack, J. P.*

JOHN DOE, prin'l. [L. S.]  
RICHARD ROE, sec'ty. [L. S.]

AN ACT to alter and amend an act, entitled “an act to extend to all persons Imprisoned for Debt, the privilege of Prison Bounds,” passed the 22d of December, 1820.—*Approved Dec. 24*, 1821.

Whereas, the time limited by the above recited act, for sheriffs in the different counties in this State to lay off prison-bounds under the direction of the inferior courts, was limited to six months in counties having jails. And whereas, certain counties in that situation have neglected to lay off jail-bounds, within the time prescribed. And whereas, their authority to do so now is doubted—

Time for lay- 42. *Be it therefore enacted*, That in every county in this State, having a  
ing off Prison- jail, where no jail-boundaries have been laid off, agreeably to the above-  
Bounds ex- recited act, it shall be the duty of the sheriffs, under the direction of the inferior  
tended. courts, to lay off, or cause to be laid off, jail-boundaries, agreeably to the  
above-recited act, at any time within six months from the passage of this act.  
Any law to the contrary notwithstanding.—[*See next Act.*]

AN ACT to amend the act “to extend to all persons Imprisoned for Debt, the privilege of Prison-Bounds,” approved 22d day of December, 1820, and the amendatory act thereof, approved the 24th December, 1821.—*Approved Dec. 22*, 1840.

Pris'n-Bounds 43. SEC. I. *Be it enacted*, That from and after the passage of this act,  
to be laid off every county in this State having jails, (where no bounds may have been laid  
where it has off as prescribed in the before-recited act,) it shall be the duty of the sheriff,  
not been done. under the direction of the inferior court, and it is hereby made legal for them,  
at any time that they may deem it expedient, to cause to be laid off prison-  
bounds, in said counties, around said jail, in conformity with the above-recited  
acts.

44. SEC. II. In all the counties of this State, where prison-bounds have

been heretofore laid off and defined, and for any cause, it shall be deemed expedient to have the same re-surveyed and laid off or changed, it shall and may be lawful for the justices of the inferior court, to have the same re-surveyed or changed, and laid off in the manner prescribed in the before-recited act.

Pris'n-Bounds to be re-surveyed, etc.

45. SEC. III. In all cases where prison-bounds shall be hereafter re-surveyed or laid off, it shall be the duty of the sheriff to return a plan of the same to the superior and inferior courts of the county, which shall be entered on the minutes of each of said courts, and a duly certified copy thereof, from the minutes of either of said courts, shall be evidence in any of the courts of this State.

Extent of Prison-Bounds.

46. SEC. IV. Where such prison-bounds have been, or may be laid off, in any incorporated city, town or village, such prison-bounds may be, in the discretion of the inferior court, extended so as not to include more than one hundred acres.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to be entitled an act to authorize the Plaintiff, in all cases of arrest under *Capias ad Satisfaciendum*, to discharge the Defendant from imprisonment, and for his property still to be bound for the Debt.—*Approved Dec. 9, 1843.*

47. SEC. I. *Be it enacted*, That from and after the passage of this act, in any case where a debtor has been arrested under an execution against the body, and is afterwards discharged from such imprisonment, either by the authority of the plaintiff, or otherwise, without the debt being paid, that such arrest and discharge shall not operate as a satisfaction of the debt; but the debtor's property shall still be liable to the judgment, as though no arrest had been made. Any usage, custom or law, to the contrary notwithstanding: *Provided always*, that the officer making such arrest, shall endorse on such execution that "the defendant is discharged from arrest, without having paid the amount due."

Discharge of Debtor under *ca. sa.* does not extinguish the Debt.

Officer must make entry on *ca. sa.*

AN ACT to carry into effect the seventh section of the fourth Article of the Constitution.—*Approved Dec. 5, 1801.*

*Whereas*, in and by the said seventh section it is declared, that [reciting the seventh section in full]. *And whereas*, the manner of delivering up such Estate has not been heretofore regulated by law, in conformity to the said seventh section—

48. SEC. I. *Be it enacted, &c.* [The first part of the section re-enacted with amendments.] And the several creditors at whose suit he, she or they are charged or imprisoned, as aforesaid; [and also, those to whom the said debtor or debtors shall or may be then indebted, *he shall cause*] to be summoned to appear personally or by their attorney, at a day to be appointed for that purpose; upon which day the debtor shall produce his books of account, if any be kept; which summons or notice shall be served on each of the said creditors [or left at their notorious places of abode], if they reside within this State; or if they reside without the State, then upon their attorney; [and if no attorney, then to be published in one of the gazettes of Augusta or Savannah, at least two months before the day appointed for such appearance.] And upon such [*day*] if any of the creditors summoned refuse or neglect to appear, upon affidavit of the due service of such rule or order, [the court shall in a summary way, examine the matter of such petition, and] the suggestions of fraud, if any; and if upon such examination it shall appear to the court that the debtor is really and *bonâ fide* insolvent, then such person shall deliver to the court a schedule of all his real and personal estate, debts, credits or effects,

Notice to Creditors m't be given.

Books of Account must be produced.

Creditor not appearing.

Schedule.



- Oath of Insol-vent Debtor. and shall take and subscribe the following oath, viz: "I, A B, do solemnly swear (or affirm, as the case may be,) in the presence of Almighty God, that I am not possessed of any real or personal estate, debts, credits, or effects, securities or contracts whatsoever, my wearing apparel, bedding for myself and family, and the working tools or implements of my trade or calling, together with the necessary equipments for a militia soldier excepted, other than are contained in the schedule now delivered. And that I have not, directly or indirectly, since my imprisonment or before, sold, leased, assigned or otherwise disposed of, or made over in trust for myself or otherwise, any part of my lands, estates, goods, stock, money, debts, securities or contracts, whereby any money may hereafter become payable; or any real or personal estate whereby to have or expect any benefit or profit to myself, my wife or my heirs—so help me God." And upon the said
- Order of Court discharging Debtor. debtor having taken and subscribed the aforesaid oath, the court shall order the sheriff or jailer to discharge the said debtor from confinement, on account of the matter contained in his [petition]. And such order shall be a sufficient warrant to the sheriff, jailer or keeper of such debtor, to discharge the said debtor, if detained for the causes mentioned in his or her petition, and no other; and he is hereby required to discharge and set him or her at liberty forthwith; the debtor paying his or her fees. Nor shall the sheriff, jailer or keeper of said debtor be liable to any action of
- Gamblers excluded from the benefits of this act. escape, or other suit or information upon that account: *Provided*, that no person shall be permitted or entitled to take any benefit or advantage of this act, who has within twelve calendar months, lost at any one time, by any species of gaming, the sum of one hundred dollars, or at different
- Punishment of persons who commit perjury under this act. times, the amount of three hundred dollars: *Provided also, and be it further enacted*, that if any such person who shall take such oath as aforesaid, shall upon any indictment for perjury, in any matter or particular, contained in the said oath, be convicted by his or her own confession, or by verdict of twelve men, as he or she may be, by force of this act, the person so convicted, shall [stand in the pillory for the space of two hours,] be imprisoned at the discretion of the court, not exceeding twelve months, and shall never after have the benefit of this act, and shall be forever after incapable of being a witness in any court of justice, or serving as a juror. —[*Punishment changed to imprisonment in the penitentiary—see eighth Division of the Penal Code.*]
- Person discharged not to be re-arrested. 49. SEC. II. Each and every debtor so discharged as aforesaid, shall never thereafter be arrested or imprisoned by virtue of any execution founded upon any judgment obtained, or hereafter to be obtained, upon any debt or contract before that time entered into by the said debtor or debtors, to any creditor so notified as aforesaid. [Neither shall any debtor, so discharged, as aforesaid, be arrested or held to bail in mesne process, for or on account of any debt or contract entered into prior to their discharge, as aforesaid.] And any creditor, so notified as aforesaid, who shall cause the person of any debtor so discharged as aforesaid, to be arrested, knowing of such discharge, shall forfeit and pay the sum of five hundred dollars, to be recovered by bill, plaint or information, in any court having cognizance thereof; one half to the use of the other creditors of said debtor, and the other moiety to the sole use of the said debtor, of which his creditors shall have no part or benefit: *Provided*, that nothing herein contained shall prevent any creditor to have execution at any future time against the property, both real and personal, of such debtor or debtors.'
- Party discharged may sue the party causing his re-arrest. 50. SEC. III. If any person shall discover and give information of any
- Concealed property discovered how to be disposed of. property embezzled or concealed by any debtor as aforesaid, previous to his discharge, or not included in the schedule so delivered in as aforesaid,



such person shall be entitled to one half of the value of such property, upon its being established that the same was the property of the said debtor, and embezzled, secreted or not included in the schedule as aforesaid.

51. SEC. IV. The property contained in the said schedule, presented to the court by such debtor or debtors, shall be delivered into the hands of the sheriff of the county, in which such debtor or debtors may have been confined, who shall make sale thereof, agreeably to the law regulating sheriffs' sales within this State. And if any part of the property so given up, shall consist of judgments, bonds, notes, contracts, securities, mortgages, liquidated demands, or open accounts, the court shall order the same to be assigned over by the said debtor or debtors, to some fit and proper person or persons, whom a majority of the creditors shall nominate, to the use of and in trust for such judgment creditors, which, when collected by the said trustee or trustees (together with the money which may be in the hands of the sheriff, arising from the sale of any property of such debtor or debtors), shall be subject to the further order of, and after the payment of the costs and charges, shall be distributed by the said court, agreeably to the laws within this State, for the payment of judgments and executions.

Disposition of the effects surrendered.

52. SEC. V. The said trustee or trustees shall proceed without delay, to collect all the debts, &c., so transferred as aforesaid, either by suit or otherwise; which, when collected, shall be paid by the said trustee or trustees into the clerk's office of the said court. And the said trustee or trustees shall have and receive five per centum on all moneys so collected by him or them, as a compensation for his or their trouble and expenses, in collecting the same. And any trustee or trustees who shall fail to pay into court any money by him or them collected as aforesaid, shall be subject to the same punishment for contempt, and to the same mode for the recovery of the said money, as sheriffs are liable to by the laws of this State.

Trustee must proceed to collect the debts.

Pay of Trustee

Failing to pay over proceeds, how punish'd.

53. SEC. VI. When any person or persons who now are, or hereafter shall be committed for any debt or damage whatsoever, and shall not be able to satisfy and pay his ordinary prison fees, such fees shall be paid by the person at whose instance such insolvent person may be confined.—[See next Act.]

Plaintiff to pay Jail Fees, in certain cases.

NOTE.—The clauses of the foregoing statute deemed inoperative, are placed between brackets; thus [ ]

AN ACT to amend the foregoing.—*Approved Dec. 13, 1809.*

Whereas, the mode pointed out by the said act, for the relief of Insolvent Debtors, is so speedy, and the process so summary, as to work great injury, in many cases, to Creditors of such Debtors; for remedy whereof—

54. SEC. I. *Be it enacted*, That from and after the passing of this act, it shall and may be lawful for the judges of the superior or justices of the inferior courts, and they are hereby required, on the petition of any person or persons confined for debt, whether charged in execution or otherwise, and whether the process by virtue of which such person or persons, is or are confined, be issued from the superior court, or other court of inferior jurisdiction, setting forth that he, she or they are so confined, and are unable to satisfy the debt or demand for which he, she or they are so confined; (or to give bail for his, her or their appearance, to answer to the action under which he, she or they, is or are confined, but are willing to deliver up the whole of his, her or their estate and effects for the benefit of his, her or their creditors,) by rule or order of court, to cause such debtor to be brought up. And being brought up, the said judge or justices shall proceed with such debtor in the manner directed by an act, entitled "an act to carry into effect the 7th section

On application for discharge what must be done.

What the Petition must contain.



- Notice to Creditors. of the 4th article of the constitution."—[See 48.] *Provided* that the notice required by the said act, to be given to the creditors of such debtor, (if the same be by notice served upon the said creditors or attorneys,) shall be given at least thirty days previously to the time appointed for bringing up such debtor. *And provided also*, that if upon bringing up such debtor, any one or more of the creditors shall suggest to the said judge or justice, that the said debtor is not fairly insolvent; or that he has been guilty of any fraudulent practices, that then and in that case, it shall be the duty of the said judge or justices forthwith, to cause an issue to be made up between the said creditor or creditors and the said debtor, fraud or not fraud.
- Issue between the parties, fraud or not fraud. 55. SEC. II. Upon such issue being made up, the said judge or justices shall cause to be drawn and summoned, in the manner pointed out by law, a jury of twelve persons, to attend at the court-house, at a particular day to be specified for that purpose, to try the said issue. And if the jury shall find that there has been fraud on the part of such debtor, then he or she shall be remanded to prison. And if they shall find that there has been no fraud, then the said debtor shall be, forthwith, discharged, in the manner pointed out by the said act, entitled "an act to carry into effect the seventh section of the fourth Article of the Constitution."
- No fraud, Debtor to be discharged. 56. SEC. III. The sheriff shall be allowed for summoning each jury, the sum of five dollars, to be paid by the creditors who shall require such issue to be made up.
- Sheriff's Fees. SEC. IV. [Repeals all repugnant laws.]

## CHAPTER IX.

### POSSESSORY WARRANT.

#### PERSONAL PROPERTY.

AN ACT the more effectually to Quiet and Protect the Possession of Personal property, and to prevent taking Possession by fraud or violence.  
—*Approved Dec. 25, 1821.*

*Whereas*, a practice hath been followed by some persons, having or laying claims to negroes or other personal property, to take or convey away the same by violence, seduction or other means, or to harbor or otherwise take, or cause the same to be taken, out of the possession of the adverse claimant, without due course of law; and oftentimes to remove the same out of the State, to the great injury of the true owner. *And whereas*, manifest injustice and many serious mischiefs may arise from such a practice, which is productive of frauds, violence, and quarrels and blood-shed—

- Complaint on oath being made, that personal property has been carried away without authority, 1. SEC. I. *Be it therefore enacted*, That upon complaint made on oath by the person injured, his agent or attorney, to any judge of the superior or justice of the inferior court, or any justice of the peace, that any negro or negroes, or other personal chattel, have been taken, enticed or carried away by fraud, violence, seduction or other means, from the possession of such deponent; or that such negroes, or other personal chattels, having

been recently in the quiet, and legally and peaceably acquired possession of such deponent, have absconded or disappeared, without his or her consent, and as he or she believes, have been harbored, received, or taken possession of, by any person or persons, under some pretended claim or claims, and without lawful warrant or authority, and that the said deponent, or the person for whom he is agent or attorney, *bonâ fide* claims a title to, or interest in the said negroes or other chattels, or the possession thereof, it shall be the duty of such judge or justice, to issue a warrant, as well for the apprehension of the party so seizing, taking, enticing, receiving, harboring, obtaining or having possession of such negroes or other chattels, as for the seizure of such negroes, or other chattels themselves. And upon the return of such warrant, the judge or justice shall hear evidence as to the question of possession, in a summary way, and cause the said negroes or other chattels, to be delivered over to the party from whose possession the same were violently, or fraudulently taken or enticed away; or from whom the same absconded; or in whose peaceable possession they last were: *Provided*, such party shall, before such judge or justice, enter into a recognizance, with good and sufficient security, in double the amount of the value of such negroes or other personal property, and the hire claimed, if any, to cause the said negroes to be produced and forthcoming, to answer any judgment, execution or decree, that may be had, issued or made, upon such suit or action at law or in equity, as the opposite party may commence or prosecute within the next four years, touching the same. And such recognizance shall be returned by such judge or justice, to the next superior court of the county where the same is taken, to be transmitted to the court where such suit or action may be commenced. And the securities upon such recognizance, shall be bound and liable for the eventual condemnation-money, and execution shall issue against them in the same manner as against securities on appeals; *Provided also*, that when the party taking out the warrant shall refuse or be unable to give such security, then the judge or justice may, in his discretion, deliver over such negroes or other personal property, to the opposite party, upon their entering into a like recognizance with security, of the same nature and effect, and to be disposed of in the same manner. And if upon return of the warrant, it shall appear that the negroes or other personal property, are in the possession, power, custody or control of the defendant, or any agent or friend of his, or acting for, or intrusted with them for him, and the said defendant doth not produce, or cause to be forthcoming the said negroes, or other personal property, to be dealt with as the law directs, the said defendant shall be committed to jail; there to remain, in safe and close custody, without bail or mainprize, until the said negroes, or other personal property, shall be produced or forthcoming, to be disposed of as aforesaid. *Provided always*, that no person or persons shall be so committed for refusing to produce, or cause to be forthcoming, any negro, or other personal chattel, which he, she or they shall satisfactorily prove to have been in his or her quiet and peaceable possession for four years, next immediately preceding the passing of this act, or next immediately preceding the issuing of the warrant.

A Warrant to be issued for the arrest of the offender and the property.

Evidence as to the quest'n of Possession to be heard.

Recognizance, with security, to be given by party applying for Warrant.

Recognizance how disposed of.

Securities how far liable.

Party taking out Warrant being unable to give security, opposite party may.

It appearing that the Defendant has the property but refuses to produce it, he is to be committed to Jail.

He shall not be committed if he has had possessi'n four years.

AN ACT to amend an act intituled "an act the more effectually to Quiet and to Protect the Possession of Personal Property, and to prevent the taking Possession thereof by fraud or violence," passed the 25th day of Dec., 1821.—*Approved Dec. 21, 1830.*

*Whereas*, it becomes necessary to establish and regulate the Fees of the Officers for their services in carrying into effect the above-recited act—



Justices' Fees. 2. *Be it enacted*, That from and after the passage of this act, the fees of the officers required to carry into effect the before-recited act, shall be for and after the following rates, to be paid by the party against whom the decision of the justice may be made, and for which execution shall issue, as on other judgments—for affidavit to obtain a warrant, and making out the same, sixty-two and a half cents; for trying the same, sixty-two and a half cents; for making out a recognizance and returning the same to court, thirty-one and a quarter cents; for making out a commitment, thirty-one and a quarter cents; for each subpoena for witnesses, twelve and a half cents. The sheriff or constable, for serving a warrant upon the person or persons included in the same, as adverse claimants or offenders shall receive the same fees, as allowed by law in criminal cases; and for taking the possession of the property included in the warrant, shall receive the same fees as allowed by law, in cases of attachment.

Constable's  
Fees.

All laws or parts of laws, militating against this act, are hereby repealed.

### *Affidavit of the Plaintiff.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the Justices of the *Peace* in and for said County,  
*John Doe*, who being sworn, saith, that in said County, on the *first* day of *April last past*, deponent was in the peaceable and legally acquired possession of a certain *Negro-man slave*, named *Jacob*, *twenty-five years of age*, of *yellow complexion*, and of the value of *one thousand dollars*. And deponent further swears, that on the said *first* day of *April, last past*, *Richard Roe*, of said County, *carried away by fraud*, said *Negro-man slave Jacob*, from the *possession* of deponent, under some pretended claim, and without lawful warrant or authority. And deponent further swears, that said *Richard Roe*, has said *Negro-man slave Jacob*, now in his *possession*. And deponent further swears, that he *bonâ fide* claims the right to the *possession* of said *Negro-man slave Jacob*. Wherefore, deponent prays the issuing of a warrant for the arrest of the said *Richard Roe*, as well as for the arrest of said *Negro-man slave Jacob*.

Sworn to and subscribed  
before me, this *April 5, 1859*.  
*James Mack, J. P.*

JOHN DOE.

### *Warrant.*

STATE OF GEORGIA, }  
Houston County. } *To any Lawful Officer to execute and return.*

Whereas, complaint, on oath, has *this day* been made before the undersigned, one of the Justices of the *Peace*, in and for said County, by *John Doe*; showing, that in said County, on the *first* day of *April, last past*, one *Richard Roe*, *took and carried away, by fraud*, (under some pretended claim, and without warrant and authority of law,) from the peaceable and legally acquired possession of him, the said *John Doe*, a certain *Negro-man slave* named *Jacob*, *twenty-five years of age*, of *yellow complexion*, and of the value of *one thousand dollars*. That said *Richard Roe*, now has said slave *Jacob*, in his *possession*. That deponent, *bonâ fide*, claims the right to the *possession* of said *Negro-man slave*: therefore, you are hereby commanded and directed forthwith to apprehend the said *Richard Roe*, (and seize and possess yourself of the said *Negro-man*

*slave*, if to be found,) and have said *Richard Roe*, (and said *slave*, if to be found,) before me, or some other Justice of the Peace for said County, that what appertains to justice, may be done in the premises, according to the statute in such case made and provided.

Witness my hand and seal, this April 5, 1859.

JAMES MACK, J. P. [L. S.]

### *Recognizance given by the Plaintiff.*

STATE OF GEORGIA, } Be it remembered, that on the *fifth* day of  
Houston County. } *April*, eighteen hundred and *fifty-nine*, *John Doe*  
as principal, and *Charles Smith* as security, both of said County and State, *personally* came before the undersigned, one of the Justices of the Peace, in and for said County, and acknowledged themselves to owe to *Richard Roe*, of said County, his heirs, executors and administrators, the sum of *two thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John Doe* hath *this day*, sued out a warrant under the Act of the General-Assembly, passed in the year eighteen hundred and twenty-one, entitled “An Act the more effectually to quiet and protect the possession of personal property, and to prevent taking possession by fraud or violence,” against *Richard Roe*; (and for the seizure of a certain *Negro-man slave named Jacob*, of the value of *one thousand* dollars;) under and by virtue of which Warrant said *Richard Roe* was arrested (and said *slave* seized) by *John Jacobs*, one of the *Constables* of said County, and brought before the undersigned Justice of the Peace, who having heard the evidence in said case with regard to the *possession* of said *slave*, ordered and adjudged, that said *slave* be restored to the *possession* of said *John Doe*, from whom he had been unlawfully *carried away*. Now, should the said *John Doe*, well and truly cause the said *slave Jacob*, to be produced and forthcoming, to answer any judgment, execution or decree, that may be had, issued or made, upon such suit or action, at law or in equity, as the said *Richard Roe* may commence or prosecute within the next four years, ensuing this date, touching the said *Negro-man slave Jacob*, then this recognizance to be void; otherwise, of force.

Before me—

*James Mack, J. P.*

JOHN DOE, *prin'l.* [L. S.]

CHARLES SMITH, *sec'ty.* [L. S.]

NOTE.—The Statute provides, “that when the party taking out the Warrant shall refuse or be unable to give such security, then the Judge or Justice may, in his discretion, deliver over such negroes, (or other personal property,) to the opposite party, upon their entering into a like recognizance, with security of the same nature and effect.” The above form, therefore, with the simple change of the names, (and the statement that the “plaintiff was unable, or refused to give the security required,” (as the case may be,) will be sufficient, where the recognizance is given by the Defendant.

### *Commitment.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the Peace,  
Houston County. } in and for said County.

To *John Jacobs*, one of the *Constables* of said County, and to the Keeper of the Jail of said County.



Whereas, a Warrant under the Act of the General-Assembly of eighteen hundred and twenty-one, entitled "An Act the more effectually to quiet and protect the possession of personal property, and to prevent taking possession by fraud or violence," issued, *this day*, at the instance of *John Doe* against *Richard Roe*, charging said *Richard Roe* with having, on the *first day of the present month carried away, by fraud*, from the peaceably and legally acquired possession of him, the said *John Doe*, (under some pretended claim,) a *Negro-man slave, named Jacob*. And whereas, upon the arrest and trial of said *Richard Roe*, under said Warrant, he was required to deliver said *slave* to said *John Doe*, in conformity with the requirements of the aforesaid statute. And whereas, said *Richard Roe* fails and refuses to deliver said *slave* to said *John Doe*, as aforesaid; therefore, you, the said Constable, are hereby commanded to deliver over to the Keeper of said Jail, the body of him, the said *Richard Roe*. And you, the Keeper of said Jail, are hereby commanded and required to receive the body of said *Richard Roe*, into said Jail, and him there keep in safe and close custody, without bail or main-prize, until he shall be delivered by due course of law.

*Witness my hand and seal, this April 5, 1859.*

JAMES MACK, J. P. [L. S.]

#### LANDS OR TENEMENTS.

AN ACT to protect the owners of Lands or Tenements against intruders, and to provide a remedy for land-owners, in certain cases.—*Approved Feb. 14, 1854.*

Plaintiff must make oath that he claims the right of Possession. 3. SEC. I. *Be it enacted*, That from and after the passage of this act, the following shall be a summary process for ejecting intruders from the possession of lands and tenements—when any person shall subscribe an affidavit before any officer qualified to administer an oath, stating, that he, either for himself, or as agent for some other named person, does *bonâ fide* claim the right of possession to any land or tenement, (describing it) and that such land or tenement is in the possession of a named person, who does not, in good faith, claim a right to such possession, and yet refuses to abandon the same. And when such affidavit shall be delivered to the sheriff of the county where the land or tenement lies, then and in that case, it shall be the duty of the sheriff, at the earliest practicable day, to exhibit such affidavit to the person described as being in possession of the land or tenement, and to turn such person out of the possession, unless the person so in possession, shall at once tender to the sheriff, a counter affidavit, stating, that he does, in good faith, claim a legal right to the possession of such land or tenement.

Sheriff must turn person in Possession out, unless he files counter-affidavit. Counter-oath may be made before Sheriff; Sheriff's fee. 4. SEC. II. The sheriff shall be a competent officer to administer an oath, for the purpose aforesaid, to the person in possession; and he shall receive for the service prescribed by this act, the sum of two dollars, to be paid by the applicant for the process.

Where counter-oath is made, Sheriff must return both to the Superior Court. 5. SEC. III. Whenever an affidavit, in the terms of the first section of this act, shall be tendered to the sheriff by the person in possession, then and in that case, the process prescribed herein, shall be stopped, [*and*] the contending parties shall be remitted to their respective rights; and the sheriff shall deposit both affidavits in the office of the clerk of the superior court of the county in which the land lies; upon which an issue may be

made up and tried by a jury, according to the laws of this State; and if the finding is for the plaintiff or movant, the clerk shall issue upon the judgment, a writ of *haberi facias possessionem*, including a *fi. fa.* for cost.

Writ of Possession to issue.

6. SEC. IV. That whenever a person shall be the tenant of another, upon land, at will or sufferance, or in any other way, when there is no contract for rent, that the land-lord may proceed to recover possession of the same, in the manner prescribed by the rent-law of this State; to be returned and tried in the same manner, except there shall be no verdict [or] judgment for any double rent.—[See title *Rent*.]

Tenant-at-Will may be turned out, as under rent-law.

### *Affidavit by the Plaintiff.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } one of the Justices of the Peace in and for said County, *John Doe*, who being sworn, saith, that he doth *bonâ fide* claim the right of possession to *lot of land, number one hundred and forty-nine, in the tenth district* of the county aforesaid, and that said *lot of land* is in the possession of *Richard Roe*, who does not, in good faith, claim a right to such possession, and yet refuses to abandon the same, although often required so to do.

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.*

JOHN DOE.

### *Counter-Affidavit filed by Defendant.*

STATE OF GEORGIA, } *Richard Roe* (against whom *John Doe*, did, on  
Houston County. } the 1st day of *May*, eighteen hundred and *fifty-nine*, before *James Mack*, a Justice of the Peace, in and for said County, make oath, claiming the right of possession of *lot of land, number one hundred and forty-nine, in the tenth district* of said County) makes oath before the undersigned, Sheriff of said County, that he (said *Richard Roe*) does in good faith, claim a legal right to the possession of said *lot of land number one hundred and forty-nine, in the tenth district* of said County.

Sworn to and subscribed,  
before me, this *May 5*, 1859.  
*John L. Halstead, Sheriff.*

RICHARD ROE.

### *Issue before the Jury.*

HOUSTON SUPERIOR COURT, *October Term*, 1859.

And now at this Term, comes *Thomas Felder*, Attorney for *John Doe*, and says, that said *John Doe* has the legal right to the possession of *lot of land number one hundred and forty-nine, in the tenth district* of said County, and of this he puts himself upon the country, etc.

THOMAS FELDER.

And *James Wall*, Attorney for *Richard Roe*, doth the like, etc.

JAMES WALL.



*Verdict of the Jury.*

We, the Jury, find the Issue in favor of *John Doe*, with costs of suit.  
THOMAS GURR, *Foreman*.

*Judgment.*

Whereupon, it is considered and adjudged by the Court here, that said *John Doe*, recover of and from said *Richard Roe*, the possession of lot of land number one hundred and forty-nine, in the tenth district of said County, and that the Clerk of this Court issue a Writ of Possession, in favor of said *John Doe*, for said lot of land. And it is further ordered and adjudged, that said *John Doe* recover of and from said *Richard Roe*, the sum of twenty dollars, for his costs, in this behalf laid out and expended ; and the said *Richard Roe*, in mercy, etc.

THOMAS FELDER, *Att'y pro J. D.*

NOTE.—For the Writ of Possession, (which must include a *fi. fa.* for costs,) see title *Dower*.

AN ACT to extend the writ of *Certiorari* to Possessory-Warrants.—*Approved Dec. 11, 1858.*

7. SEC. I. That from and after the passage of this act, the writ of *Certiorari*, shall at the option of any person, be extended to all possessory warrants: *Provided*, the applicant give bond and security, and do and perform all other acts now required by law, in relation to *Certioraries*.  
SEC. II. [Repeals conflicting laws.]

CHAPTER X.

FORCIBLE ENTRY AND DETAINER.

AN ACT to reform, amend and consolidate the Penal Laws of the State of Georgia.—*Approved Dec. 23, 1833.*

Forcible Entry. 1. SEC. XII. Forcible Entry is the violently taking possession of Lands and Tenements, with menaces, force and arms, and without authority of law.

Forcible Detainer. 2. SEC. XIII. Forcible Detainer is the violently keeping possession of Lands and Tenements, with menaces, force and arms, and without authority of law.

Punishment for Forcible Entry or Detainer. 3. SEC. XIV. Any person who shall be guilty of a forcible entry, or a forcible detainer, or both, may be indicted, and on conviction shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court. And the court before whom the conviction takes place, shall cause restitution of possession of the premises to be made to the party aggrieved: *Provided always*, that if the party forcibly detaining lands and tenements, or those under whom he claims, shall have been in peaceable possession of the same for the space of three years, or more, immediately preceding the filing of the complaint, such person or

party shall not be subject to the penalties of this section; nor shall restitution of possession be made: *And provided also*, that the only questions to be submitted to and determined by the jury, in trials of forcible entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title, on either side.

Title does not come in question.

4. SEC. XV. Any one or more justice or justices of the peace, upon complaint made on oath, of any forcible entry into lands or tenements; or of any forcible detainer of the same, shall have power to draw a jury of twelve men from the jury-box of the district in which the lands and tenements, so alleged to be forcibly entered or detained, are situated; and cause the sheriff of the county, or the constable of the district, to summon them to be and appear, at the usual place of holding court of the said district, on a certain day to be appointed by the said justice or justices, for the purpose of trying the fact, of such forcible entry or detainer. And the said justice or justices shall also issue a summons, to be directed to the person or persons charged with such forcible entry or detainer, and cause the same to be served on him or them, by the sheriff or by the constable, at least five days before the time appointed for trial, requiring him or them, to appear and defend the charge alleged against him or them. And if all the jurors should not attend, or if there should be any legal objection to any of them, then the justice or justices may cause the jury to be completed by *tales* jurors. And upon the trial, the only facts which the jury shall enquire into, shall be the possession and the force; but they shall have no power to enquire into the merits of the title, on either side. The following oath shall be administered to the jurors, viz—"You shall well and truly enquire, whether A B has made any forcible entry into the lands or tenements of C D, and him ejected therefrom; or forcibly detains the lands or tenements of the said C D, and a true verdict give, according to the facts as they may appear to you in evidence—so help you God." And if, upon the trial of such case, the jury shall find such forcible entry, or forcible detainer, or both, then the said justice or justices, shall give judgment accordingly, and cause the sheriff to make restitution of possession of the premises, to the party aggrieved: *Provided nevertheless*, that if the person or persons charged with such forcible entry, or detainer, (or those under whom he or they claim,) shall have been in peaceable possession of the premises, for the space of three years, or more, as aforesaid, then no restitution of possession shall be made: *And provided also*, that no proceedings under this section, shall exempt any person guilty of a forcible entry, or detainer, from indictment and punishment, under and by virtue of the preceding section of this Division.

Justice to draw a Jury who shall try the fact.

Sheriff or Constable to summon Jury.

Party to be summoned.

Tales Jurors.

Questions for the enquiry of the Jury.

Oath of the Jury.

Judgment for the Plaintiff, and restitution of possession.

Three years' possession prevents this proceeding. Party may, notwithstanding, be indicted.

AN ACT to amend the Fifteenth Section of the Ninth Division of the Penal Code, as to service of Summons upon persons guilty of Forcible Entry and Detainer, in certain cases.—*Approved Jan. 12, 1852.*

*Whereas*, it so happens that persons residing on or near to the County-line, in one County, are guilty of Forcible Entry and Detainer, or Forcible Entry or Detainer, in the adjoining County. *And whereas*, by the provisions of said Section of the Penal Code, no mode is pointed out for perfecting service in such cases; for remedy whereof—

5. SEC. I. *Be it enacted*, That when any person or persons shall be charged with forcible entry and detainer, or either, not residing in the county where the lands or tenements are alleged to be forcibly entered or detained, are situated, service shall be perfected upon him, her or them, by the sheriff or constable, as though he, she or they, resided in the county or district in which such lands or tenements are situated.

Service on persons residing out of the County, how perfected.



SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to compel non-resident Defendants, in cases of Forcible Entry, Forcible Detainer, or Forcible Entry and Detainer, to give Bond and Security, in certain cases.—*Approved Feb. 18, 1854.*

Non-resident  
defendants to  
give Bond  
and Security.

After the com-  
mencement  
of suit.

Bond payable  
to the  
Plaintiff.  
Failure to  
give Bond,  
possession to  
Plaintiff.

6. SEC. I. *Be it enacted*, That from and after the passage of this act, all non-resident defendants, who may forcibly enter, or forcibly detain, or forcibly enter and detain, or who have already forcibly entered or detained, or who have already forcibly entered and detained, and against whom suit is now, or may hereafter be, instituted by his tenants, [for] any lot or parcel of land in any county in this State, shall be compelled to give bond and security, for all costs and damages which may be recovered against him for such forcible entry or detainer, or forcible entry and detainer: *Provided*, that such defendant shall not be compelled to give such bond until after the commencement of an action for such offence, as now provided by law.

7. SEC. II. That said bond shall be made payable to the plaintiff in such action, subject to be recovered as in cases of bond given on appeal, in this State. And on failure to give such bond, the jury trying said cause, shall award possession of the premises in dispute, to the plaintiff. Any law or custom, to the contrary notwithstanding.

### *Affidavit of the Plaintiff for Forcible Entry and Detainer.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the Justices of the Peace, in and for said  
County, *John Doe*, who being sworn, saith that on the *twentieth* day of *April*, last past, *Richard Roe*, of said County, forcibly and without authority of law, entered into *lot of land*, number *forty-nine*, in the *tenth* district of said County, (said *lot of land* being the property of deponent,) and violently, then and there, took possession of said *lot of land*, with menaces, force and arms; and still keeps and retains possession of said *lot of land*, contrary to the laws of said State, the good order, peace and dignity thereof.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }  
*James Mack, J. P.*

JOHN DOE.

NOTE.—If the Defendant's possession was originally lawful, and he will not deliver possession, the proceeding must be for *unlawful Detainer*, and so expressed in the Affidavit.

If the Defendant resides out of the County in which the proceedings are instituted, that fact must be stated in the Affidavit.

### *Summons to the Defendant.*

STATE OF GEORGIA, } *To Richard Roe, of said County.*  
Houston County. } Whereas, on the *first* day of *May* instant, *John Doe* appeared before the undersigned and made oath, that on the *twentieth* day of *April*, last past, you, the said *Richard Roe*, did forcibly enter into *lot of land* number *forty-nine*, in the *tenth* district of said County, and violently and without authority of law, then and there, took possession of said *lot of land*, (said *lot of land* being the property of him, the said *John Doe*,) with menaces, force and arms, and that you, the said *Richard Roe*, still keep and retain possession of said *lot of land*;

contrary to the laws of said State, the good order, peace and dignity thereof: wherefore, you are hereby notified and required to be and appear at *Perry*, in said County, (the place of holding Court in and for the 619th District, G. M.) on the *tenth* day of the *present month*, by *ten* o'clock in the forenoon, when and where the question of *Forcible Entry and Detainer*, between said *John Doe* and yourself, will be submitted to the consideration of a Jury, according to the statute in such case made and provided.

*Witness my hand and official signature, this May 1, 1859.*

JAMES MACK, J. P.

NOTE.—A copy of the Summons above must be served on the Defendant, “at least five days before the time appointed for trial.” The Notice may be served by the Sheriff, or a Constable.

### *Precept for Summoning the Jury.*

STATE OF GEORGIA, } By *James Mack*, Justice of the Peace, in and for  
Houston County. } said County.

To *John Jacobs*, Constable for the 619th District, G. M.

These are to require you, immediately upon sight hereof, to summon the following named twelve Jurors, to wit, *James Thompson, Hugh West, &c., &c.*, to be and appear before me at *Perry*, the place of holding Court in and for the 619th District, G. M., in said County, on the *tenth* day of the *present month*, by *ten* o'clock in the forenoon; then and there to enquire of, do and execute all such things, touching the question of *Forcible Entry and Detainer*, pending between *John Doe* and *Richard Roe*, then and there to be inquired into. And be you then and there, to certify what you shall have done in the premises; and further to do and execute what shall be, then and there, enjoined you.

*Witness my hand and official signature, this May 1, 1859.*

JAMES MACK, J. P.

NOTE.—The Jury must consist of twelve Jurors; if all those summoned do not appear, the Jury may be made up of *tales* Jurors; that is, from the by-standers.

A verbal Summons of the Jurors is sufficient.

### *Verdict of the Jury.*

We, the Jury, find a *Forcible Entry and Detainer* of the premises, on the part of *Richard Roe*, the Defendant, and the Possession for the Plaintiff, *John Doe*.

HUGH WEST, *Foreman*.

### *Judgment of the Court.*

Whereupon, it is considered by the Court here, that the Defendant, *Richard Roe*, has been guilty of *Forcible Entry and Detainer*, of the premises mentioned in the proceedings. And it is further considered, that the Plaintiff, *John Doe*, do have full, quiet and peaceable possession of said premises, and that a Writ of Possession issue accordingly. And further, that the Plaintiff recover against the Defendant *fifteen* dollars for his costs and charges, in this behalf expended, and that



execution issue for the same. And the Defendant in mercy, may, &c. Judgment signed, *May 10, 1859.*

JAMES MACK, J. P.

*Writ of Possession.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the  
*Houston County.* } Peace in and for said County.

*To the Sheriff of said County—Greeting.*

Whereas, *John Doe* has lately, in a Court organized and held for that purpose, agreeably to statute, by the judgment of said Court, recovered against *Richard Roe*, of said County, possession of lot of land number *forty-nine*, in the *tenth* district of said County, agreeably to original survey, (being in the *619th* District, G. M., in said County,) with its appurtenances; which said premises have been, and are still, unjustly withheld from the said *John Doe*, by the said *Richard Roe*, whereof he is convicted by the verdict of a jury. And forasmuch as it is adjudged, in the said Court, that the said *John Doe* have execution upon his said judgment, against the said *Richard Roe*, according to the force, form and effect of his said recovery—therefore, we command you, that without delay, you deliver to the said *John Doe*, possession of the said premises so recovered, and the appurtenances thereof; and that you certify to our Justices' Court, to be held in and for said District and County, on the *fourth Saturday in June next*, in what manner you shall have executed this Writ. And have you, at said Court, this Writ.

*Witness my hand and official signature, this May 10, 1859.*

JAMES MACK, J. P.

NOTE.—The Justice should issue a *fi. fa.* for the Costs. The Writ of Possession must be directed to and executed by the Sheriff.

*Return by the Sheriff.*

Executed the within Writ by putting *John Doe* in full and quiet Possession of the premises therein mentioned. This *May 11, 1859.*

MADISON MARSHALL, Sheriff.

NOTE.—We remark here, for the benefit of those who may be called upon to act under the foregoing statutes, that *Forcible Detainer* may be supported, when the claimant had a prior possession, and the Defendant has obtained possession by *fraud*, without force, and then *forcibly Detains*.

Proceedings under these statutes may, also, be maintained, where the Defendant's Possession was originally lawful, but his lease having expired, he *Detains* the premises from the Owner, by menaces, force and arms; as in the case of a Tenant, whose Term has expired.

*Bond under the Act of 1854.*

STATE OF GEORGIA, } We, *Richard Roe*, as principal, and *Charles*  
*Houston County.* } *Smith*, as security, both of the County of *Dooly*, in said State, are held and bound unto *John Doe*, of the County of *Houston*, in the sum of *one thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said

*John Doe* has instituted proceedings against said *Richard Roe*, charging said *Richard Roe* with *Forcible Entry and Detainer* of lot of land number forty-nine, in the tenth District of *Houston County*, to which lot of land said *John Doe* claims the right of possession. Now, should the said *Richard Roe* well and truly pay all costs and Damages which may be recovered against him, provided it shall be made to appear that he is guilty of the charge of *Forcible Entry and Detainer*, as aforesaid, then this obligation to be void; otherwise of force. This *May 5, 1859*.

Approved—

*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]

CHARLES SMITH, *sec'ty.* [L. S.]

NOTE.—The amount of the Bond is in the discretion of the Justice, who, while he takes care that it is sufficient, must also take care that it is not excessive.

Should the Defendant “fail to give such Bond, the Jury trying the cause shall award Possession of the premises in dispute to the Plaintiff.”

## CHAPTER XI.

### STATE AND COUNTY OFFICERS.

#### COMPTROLLER-GENERAL.

AN ACT further explaining and defining the duties and powers of the Comptroller-General.—*Approved Dec. 5, 1799.*

*Whereas*, great abuses have arisen, and the State hath sustained many losses in the revenue, for the want of a proper officer to compel persons intrusted with the collection and care of public moneys, to account for the same—

1. SEC. I. *Be it enacted*, That the comptroller-general, shall from and after the passing of this act, keep fair and accurate accounts, showing the several appropriations of money; examine and check all governor's, president's and speaker's warrants, and charge the amount thereof to the funds on which they may be respectively drawn, previous to their being presented to the treasurer for payment. Examine and correct all returns of taxable property; settle with the several tax-collectors, and all other persons indebted to the State. And in all cases where payments may be made at the treasury, give receipts for the same, founded on the treasurer's certificates, which certificates shall specially set forth the amount, on what account, and by whom paid; and be lodged as vouchers, in the comptroller's office.

Duties of the  
Comptroller-  
General de-  
fined.

2. SEC. II. All the powers heretofore vested in the treasurer, to enforce the collection of public moneys, shall be and the same is hereby declared to be vested in the comptroller-general.

Powers trans-  
ferred to  
Comptroller-  
General.

AN ACT to amend an act entitled “an act further explaining and defining the duties and powers of the Comptroller-General,” passed the 5th day of Dec. 1799. Also, more particularly to define and prescribe the duties of the Treasurer of this State.—*Approved Dec. 25, 1821.*

3. SEC. I. From and after the passing of this act, it shall be the duty of the comptroller-general, to report to the legislature, within the first week of each annual session, an account of all balances of appropriations remaining unexpended at the close of each political year.

Unexpended  
appropriations  
to be annually  
reported.



- Over-drafts not to be approved. 4. SEC. II. It shall not be lawful for the comptroller, in executing the duties prescribed to him in the aforesaid, or any other act, to accept, sanction or pass, any order, draft or warrant, drawn on or payable out of any appropriated fund that may have been exhausted or covered by orders, drafts or warrants of antecedent date or acceptance. Nor shall the treasurer pay money to any draft or warrant, (except president or speaker's warrants,) until the comptroller-general shall first have approved and accepted the same, pursuant to the provisions of said act. Nor out of any other fund or appropriation than that on which the said draft or warrant is legally chargeable.
- Treasurer m'st have Comptroller's approval before making payments. 5. SEC. III. The said comptroller-general and treasurer, shall be respectively, accountable for the amount of all orders, drafts or warrants by them accepted, approved, passed or paid, contrary to the provisions of this act; to be recovered in any court having competent jurisdiction, by action of debt; prosecuted in the name and for the use of the State, against said comptroller-general and treasurer, respectively, and their securities.
- Comptroller and Treasurer responsible for illegal payments. 6. SEC. IV. It shall be the duty of the comptroller-general to keep a regular account with the treasurer, in which said treasurer shall be charged with all moneys paid into the treasury; and to place to his credit, the several sums specified in all orders, drafts and warrants, legally made or drawn on him.
- What the Comptroller's Annual Rep't must contain. 7. SEC. V. It shall be the duty of the comptroller-general to report to the legislature, within the first week of each annual session, a full and complete account of the state and condition of the treasury, comprising the aggregate sum actually paid in, for all taxes, debts and demands of whatsoever description, during each preceding political year, and the several items of expenditure incurred for the same period; the salaries and pay of all officers and agents, employed in the civil and military service of the State; the incidental expenses of the legislature, executive and judicial departments of the government, and all sums paid or due to individuals by special contract; and at the time of making such annual report, the comptroller shall annex as a part thereof, a statement of the amount of taxes and dues with which the inhabitants of each county in the State, stand charged in the digest returned to his office, by the several receivers of tax-returns in this State; the names of all debtors, delinquents, collectors, [*delinquent collectors*] and depositaries of public moneys, and the several sums in the payment of which they have made default.
- Shall suggest amendments to revenue laws. 8. SEC. VI. It shall be the duty of the comptroller-general to accompany his said annual report with a recommendation of such changes or amendments of the revenue laws of the State, as in his opinion may tend to insure their more prompt and faithful execution, and to curtail the expenses of collection.
- Bank and other corporations to pay to Comptroller's draft. 9. SEC. VII. All banks of discount and deposit, corporations and companies, of whatever kind or description, by which moneys are or may hereafter become payable to the treasury of this State, shall be exclusively subject to the draft of the comptroller-general for the sums which may, from time to time, become due; who is hereby directed, immediately on the accrual of such dues and demands, to issue his drafts for the same, ordering the payment thereof to be made to the treasurer of this State.
- How far Governor may suspend Tax Executions. 10. SEC. VIII. It shall not hereafter be lawful for the executive department of government to interfere with, or in any manner to suspend the collection of taxes, debts or dues which may be legally demanded by the comptroller or treasurer, for the use of the State, for a longer period than till the meeting of the next legislature after the suspension; to which he shall com-



municate the case in which the suspension was had, and the particulars upon which it was granted.

11. SEC. IX. All executions for the collection of taxes due this State, Tax Executions shall hereafter be issued by the comptroller-general only. Any law to the contrary notwithstanding. Comptroller.

AN ACT further to define the duties of Comptroller-General, Solicitors and Attorney-Generals, Collectors and Sheriffs. And for other purposes.

—Approved Dec. 22, 1823.

12. SEC. I. From and after the passing of this act, all the evidences of debt now due, or which may hereafter become due to the State, shall be deposited in the office of the comptroller-general, whose duty it shall be to call for and receive from the treasurer all such evidences as now are in the treasury; to open and keep separate and distinct accounts of every description of debt against the treasurer, charging him with all sums paid in thereon, as in the accounts of the general tax. And to perform all the duties in the collection of debts due the State, which have hitherto been performed by the treasurer.

Evidences of debt to be turned over to Comptroller; his accounts with Treasur'r, how kept.

13. SEC. II. The comptroller-general is hereby directed to furnish the attorneys and solicitors-general, each, with a list of all the executions which have hitherto issued or which may hereafter issue against defaulting tax-collectors, within their respective circuits; whose duty it shall be to report to the comptroller-general, annually, on or before the meeting of the General-Assembly, the situation of said executions; what prospect there is of collecting the money, and any other circumstances of importance to be known, relative thereto.

Comptroller must furnish Attorney and Solicitors-General with a list of defaulting Tax-Collectors, etc.

14. SEC. III. The comptroller-general is hereby required to issue executions against all defaulting tax-collectors and their securities, if any, immediately after the tax which they were appointed to collect shall have become due. And in the event of the death of the collector, or either of them, or all of his securities, the execution shall issue against the survivors and the legal representatives of the deceased.

Must issue execution against defaulting Tax-Collectors.

15. SEC. IV. The comptroller-general shall not, in future, approve any warrant, unless the same is legally chargeable to the fund upon which it is drawn.

Warrants how approved.

16. SEC. V. All tax-collectors, who shall fail to pay over the tax which he was appointed to collect, immediately after it becomes due, shall pay twenty per cent. per annum on the amount thereof, until paid; which rate of interest shall be set forth in the face of the execution which may be issued against him and his securities.

20 per cent. to be paid by defaulting Tax-Collector.

17. SEC. VI. Whenever any execution or executions against a public debtor, are placed in the hands of any sheriff or his deputy, for collection, it shall be his duty to make a return thereon to the attorney or solicitor-general of the circuit in which he lives, within three months; and upon failure to do so, the attorney or solicitor-general is hereby required to obtain a rule, at the superior court, next after the expiration of the three months, against the said sheriff or his deputy, requiring him to show cause why the money has not been collected, and if collected, why it has not been paid over. And should it appear that the money has been collected and detained longer than the time prescribed by this act, then the sheriff, or his deputy, shall pay twenty per cent. per annum on the amount so detained, after a written demand by the solicitor or attorney.

Duty of Sheriff; who is liable to 20 per cent. for default.

18. SEC. VII. Whenever any public money shall have been collected by or paid over to the attorney or solicitor-general, and they detain the same more than one month, in their hands, they shall pay twenty per centum per annum thereon, until it is paid into the treasury.

Att'y or Sol'r making default, to pay 20 per cent.



Unqualified Collector, in certain circumstances, may be indicted. 19. SEC. VIII. If any tax-collector elect, shall proceed to collect the tax, or any part thereof, before he shall have given bond and taken the oath of office, he shall be liable to indictment, and upon conviction thereof, [shall be punished by] fine and imprisonment, at the discretion of the court.

Comp. Gen'l's salary increased. 20. SEC. IX. The comptroller-general, for and in consideration of the additional services and duties, shall be entitled to receive in the manner provided in the appropriation law, the additional salary of three hundred dollars per annum.—[See 68.]

SEC. X. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to regulate the auditing and payment of Accounts against the State.—*Approved Dec. 26, 1836.*

Accounts against the State to be audited. 21. SEC. I. From and after the passing of this act, all accounts exhibited against this State, shall be audited by the comptroller-general, and certified by him to be correct.

Governor may withhold pay-me't, notwithstanding. 22. SEC. II. When accounts, so audited and certified by the comptroller-general, shall be presented to the governor, it shall be his duty to order the same to be paid, by a warrant on the treasury: *Provided*, that the governor shall have the right, in any particular case, to withhold his approval of any account certified and approved by the comptroller-general.—[See next Act.]

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT [to amend "an act"] to regulate the auditing and payment of Accounts against the State," approved Dec. 26, 1836, so as to extend the duties of the Comptroller-General, in supervising the Accounts of Agents and others entrusted with the public funds.—*Approved, Dec. 29, 1838.*

Accounts of all Agents to be audited by Comptroller-General. 23. SEC. I. *Be it enacted*, That in addition to the duties of the comptroller-general, as required by the above-stated act, it shall be and is hereby declared to be the duty of the said comptroller-general, to supervise and audit the accounts of the agents of the State and others, to whom have been or may hereafter be entrusted with the expenditure of moneys appropriated for public purposes, and drawn from the treasury; and make report thereof to the governor, who shall lay the same, annually before the General-Assembly.

Governor to direct proceedings ag't defaulting Agent. 24. SEC. II. If, at any time, it shall so happen that any of the public agents shall fail to make out semi-annual reports and accounts current, concerning the disbursements of the public money entrusted to such agents, supported by proper vouchers, such defaulting agent shall be proceeded against in such manner as the governor shall in his discretion think most conducive to the interest of the State; any law to the contrary in anywise notwithstanding.

AN ACT to regulate the Auditing of Accounts rendered by certain persons; and to provide for default in the application of Moneys appropriated, in certain cases.—*Approved Dec. 29, 1838.*

Bond and Security to be given by Agents, who must make reports, etc. 25. SEC. I. *Be it enacted*, That from and after the passage of this act, no money appropriated for making or improving roads, improving the navigation of rivers, or other like objects, shall be paid out of the treasury of this State, until the person or persons appointed to receive and disburse such money, shall have given good and sufficient bond and security, to apply the same ac-

according to the provisions of law, making such appropriation. And moreover, to make due and periodical reports of his or their actings, doings and disbursements in the premises.—[See 30.]

26. SEC. II. It shall be the duty of the comptroller-general, from time to time as such reports are made, to audit the accompanying accounts, and to certify only such as shall be duly sustained by vouchers, and to credit the parties bound with the amounts audited and allowed. And in case any disbursing officer shall, for three months, be in default in making his or their report, or shall for the like space of time fail in producing the proper vouchers to sustain his or their accounts, it shall be the duty of his excellency the governor, on notice of the fact from the comptroller-general, to order the bond or bonds of such defaulting officer to be sued, and to report the same to the General-Assembly, at the ensuing session.

Accounts m't  
to be audited.

Suit on Bonds  
of defaulters.

27. SEC. III. Notice shall be given, by publication, by his excellency the governor, to all persons having in their possession money, negroes, or other property of the State, heretofore appropriated for the improvement of roads or rivers, and who have not fully accounted for the same, to render their accounts on or before the first day of June next; and to make a full and detailed report of his or their operations; and to show sufficient reason, if any they have, why the same should not be appropriated to some other object.

Duty of Ag'ts  
heretofore  
appointed.

#### GOVERNOR, COMPTROLLER-GENERAL, AND TREASURER.

AN ACT more effectually to prescribe the method of keeping Accounts, and adjusting the Annual Account Current, in the Executive, Comptroller-General and Treasurer's offices, and for other purposes.—*Approved Dec. 23, 1839.*

28. SEC. I. *Be it enacted*, That it shall be the duty of his excellency the governor, for the time being, and his successors in office, to have kept in his office a well bound book, in which shall be entered, in alphabetical order, the full amount of all annual appropriations; setting forth the amounts under their several heads, both common and special. And also, to have all warrants he may order to be drawn, charged to the special appropriation on which it is drawn, and in whose favor, and the day on which the same was issued.

Book of Ap-  
propriations  
to be kept in  
Executive De-  
partment;  
entries, etc.

29. SEC. II. It shall be his further duty to have kept a full and accurate account of all sum or sums of money that now are or may hereafter be set apart, as a fund for the redemption of funded debts, particularly setting forth the amounts for the several specific purposes, and the amount when drawn, and in whose favor, and at what time.

Book as to  
funded Debt.

30. SEC. III. He shall have made out and entered in said books, from time to time, a schedule of all bonds or evidences of debt that may now be in his office, or that may hereafter be deposited there, and have the same deposited in the comptroller-general's office; the originals there to be collected, agreeably to the provisions of an act passed on the 29th Dec., 1838.

Schedule of  
Bonds, etc.  
Originals  
where kept.

31. SEC. IV. It shall be the duty of the comptroller-general to have kept in his office a similar book, and on the same plan, particularly checking all warrants, and particularly setting forth the appropriation, or other specific fund on which it was drawn, the time, amount, and in whose favor the same was drawn.

Similar Book  
to be kept by  
Comptroller.

32. SEC. V. It shall be the duty of the treasurer to have kept in his office a similar book, in which he shall have entered all warrants that may be drawn on him by the executive, setting forth in whose favor the same was drawn, the time, amount, and from what fund the same was drawn and paid. And also, to file the warrants thus entered, in separate packages, labelled, setting forth the time, amount, and the appropriation on which they were drawn.

Similar Book  
to be kept by  
the Treasurer.



Further duty of Treasurer. 33. SEC. VI. It shall be his duty to keep, annually, an account of all taxes that may be due and unpaid by the several chartered banks, and such as may, from time to time, hereafter be chartered, and collect the taxes thereon, agreeably to the law now in force for collecting the same. And also, to keep an accurate account of all taxes which may hereafter be annually paid into the treasury, by the collectors of the several counties of this State.

Governor, Comptroller and Treasurer must Report to the Legislature. 34. SEC. VII. It shall be the duty of the executive, comptroller-general and treasurer, respectively, [*see 36,*] to lay before each branch of the legislature, annually, on the weeks of the session, [*the first week of the session,*] an abstract or copy from their books, of all entries therein made, agreeably to the provisions of this act. Any law, usage or custom, to the contrary notwithstanding.

AN ACT for the better regulation of the Treasury. And prescribing the duties of Treasurer and Comptroller-General. And providing for the management and security of the funds set apart for the payment of the public debt. And defining, in part, said funds.—*Approved Dec. 28, 1843.*

Treasurer to submit estimates for each succeeding year; report deficiency and suggest new objects of taxation. 35. SEC. I. *Be it enacted,* That it shall be the duty of the treasurer, at each regular session of the legislature, to submit detailed estimates of the probable receipts and expenditures of each year, for [each] the [two succeeding] political years; in which he shall state fully, the probable sources of income, and the probable amount of revenue, from each source. And in the event of a probable deficiency, he shall submit estimates for additional revenue, specifying particularly the increased rate of taxation proposed, or the new objects of taxation, and the probable revenue accruing from each. He shall likewise, in said report, designate the several objects of appropriation, and the amount required for each.

Treasurer and Comptroller to report to the Governor. 36. SEC. II. The treasurer and comptroller-general shall, annually, submit their reports, (now required by law to be made to the legislature,) to his excellency the governor, on or before the twentieth day of October, and by him shall be laid before the legislature in his biennial [*annual*] message.

Governor's Warrants. Public debt, etc. Interest where paid. 37. SEC. III. All moneys belonging to the State, shall be paid into the treasury, and shall not be drawn therefrom but upon warrants signed by the governor. And all funds which may be pledged to the payment of the public debt, or interest thereon, shall in nowise be paid to any other object of appropriation. And all payments of interest, herein provided for, shall be paid at the treasury, or upon warrants drawn from [*upon*] the treasury for that purpose.

Report as to State Bonds, Interest, etc. 38. SEC. IV. It shall be the duty of the treasurer to report to each session of the legislature, the amount of debt, bearing interest for each year, distinguishing between the sterling and federal bonds, the rate per cent. paid upon each kind of bonds, the amount (at each rate per cent.) paid, the exchange paid on the same, and the aggregate amount of interest paid in each year, the amount due which is unpaid at each semi-annual payment, the reasons for such non-payment, the names of the holders of said bonds, and the amount owned by each, as far as practicable.

Accounts of Chief Engineer W. & A. R.R. to be audited. 39. SEC. V. The comptroller-general, shall at the end of each quarter, audit the accounts of the chief engineer, or paying officer of the Western and Atlantic Rail-road, and report to the executive the result of his examination of said accounts.

Undrawn Appropriations. 40. SEC. VI. Whenever any appropriation shall not be called for within six months after the expiration of the political year for which it shall be



appropriated, the same shall revert to the general fund in the treasury, and shall not be drawn therefrom except upon a new appropriation made.

41. SEC. VII. Upon a warrant issuing in favor of the treasurer, for the payment of the interest or principal of the debt, he shall deposit in the executive office the coupons or bonds on which such payments shall be made; and his excellency the governor, shall cause the same to be marked "Paid," and filed away, subject to the order of the next legislature.

Paid Bonds and Coupons to be filed in Executive Department.

42. SEC. VIII. All dividends on bank-stock shall be paid into the treasury. And all stocks which may belong to the treasury, are hereby set apart as a fund for the payment of the public debt, and may be disposed of on the best terms possible, by his excellency the governor, for that purpose.

All stocks pledged to the payment of the public debt.

43. SEC. IX. It shall be the duty of the treasurer to report to his excellency the governor, at the end of each quarter, a statement of the receipts of all moneys [coming] into his office during the preceding quarter, specifying the particular sources from which the same may be derived.— [On oath—see 45.]

Treasurer must report to the Governor or quarterly.

SEC. X. All laws or parts of laws militating against this act, be and the same are hereby repealed.

#### COMPTROLLER, TREASURER, SURVEYOR-GENERAL AND SECRETARY OF STATE.

AN ACT to amend the several laws relative to the duties of Comptroller-General and Treasurer; and to require Bonds to be executed by them, and by the Surveyor-General and Secretary of State.—*Approved Dec. 28, 1843.*

44. SEC. I. *Be it enacted*, That the treasurer hereafter to be elected, before he shall be permitted to enter upon the duties of his office, shall execute a bond payable to the governor of the State and his successors in office, with sufficient sureties, to be approved by the governor, in the penalty of two hundred thousand dollars, with condition, faithfully to account for all money and effects that shall be received by him as treasurer, and faithfully to perform all the duties of said office. And that the comptroller-general, surveyor-general and secretary of State, hereafter to be elected, shall respectively, before entering upon the duties of their offices, execute the like bond; the comptroller-general in the penal sum of twenty thousand dollars, and the surveyor-general and secretary of State, each, in the penal sum of ten thousand dollars; with condition, faithfully to execute the duties of their said offices, respectively. Which bonds shall be filed in the executive office, and a copy of any such bond, certified by one of the secretaries of the governor, shall be received as evidence, instead of the original, in any of the courts of this State: *Provided*, that nothing herein contained shall impair or affect the validity of any bond heretofore executed, by any treasurer or other officer herein designated.

Treasurer must give Bond and Security.

Comptroller, Surveyor-General and Secretary of State must give Bond.

Certified copies made evidence.

45. SEC. II. The treasurer shall, at the end of every quarter of the year, make a written report, on oath, of the several sums of money and effects received by him during the three months preceding such report, which shall be filed and preserved in the executive office.

Quarterly Report of Treasurer to be on oath.

#### PUBLIC PRINTER.

AN ACT to provide for the election of a Public Printer, and to regulate the printing required to be performed by the Legislature.—*Approved Dec. 23, 1836.*

46. SEC. I. At every annual session, the General-Assembly, by joint ballot, shall elect a State-printer, whose duty it shall be to print the laws and journals of the next following annual session, and such bills and other docu-

State Printer; his duty.



ments as either branch of the General-Assembly shall, at such next following annual session, direct to be printed. And should there be an extra session of the General-Assembly, between the election of the State-printer aforesaid and the next following annual session, he shall execute the like public printing of such extra-session.—[See 53.]

Printing to be done in this State. Printer to give bond, etc. 47. SEC. II. The public printing aforesaid shall be performed within the State, and that the State-printer chosen as aforesaid, shall give bond with security, to be approved by the governor, in the sum of ten thousand dollars, for the faithful discharge of his duty, as such.

Printing, how executed. 48. SEC. III. The laws and journals shall be printed on [*in*] small-pica, on a page of the size of the page of the laws of the United States, and of like intervals between the paragraphs and laws.

Amounts to be paid for Public Printing. 49. SEC. IV. The public printing shall be paid for at the following rates, viz.: for each sheet of the laws and journals, containing eight octavo pages, one cent and a-half; for each sheet of eight octavo pages of the job-printing, eight cents, through the first hundred sheets, and four cents per sheet, of eight octavo pages, after the first hundred sheets; each single job, less than a sheet, to be counted for a sheet; rule and figure work, either in the laws or journals, or in the job-printing, shall be paid for at double those rates. For cutting, folding, stitching, covering, title-page and trimming, of ten thousand volumes of the laws and journals, there shall be paid eight hundred dollars, any other number to be paid for at the same rate.—[See 57.]

AN ACT to amend an act entitled “an act to provide for the election of a Public Printer, and to regulate the printing required to be performed by the Legislature,” approved December 23, 1836. And to provide for the continuance of Officers whose election is required to be annual.—*Approved Dec. 21, 1843.*

Public Printer and others hold their offices two years. 50. SEC. I. *Be it enacted*, That the person who shall be elected public printer, at a regular session of the General-Assembly, shall be elected for the term of two years, commencing on the first Monday of November, 1845, and until a successor shall be elected and qualified [*see 52*]. And that all officers whose election by the General Assembly is required by existing laws to be made annually, shall hold their offices or appointments for two years, ensuing their election, and that vacancies therein shall be filled as directed by the Constitution.

Printing to be by order. 51. SEC. II. The public printer shall not print any documents with the acts and journals, unless directed so to do by resolution of the General-Assembly.

AN ACT to amend the several acts of the General-Assembly, in regard to the election of Public Printer; and more particularly to prescribe the duties, liabilities and compensation of said officer; and for other purposes.—*Approved Feb. 16, 1854.*

Public Printer elect enters on duty 1st Nov., 1855. 52. SEC. I. *Be it enacted*, That the person who may be elected public printer by this General-Assembly, shall enter upon his duties on the 1st day of November, 1855, and shall continue to hold his office for the term of two years, or until his successor is elected and gives bond, unless sooner removed by the governor, under the provisions of this act.

What he must print. 53. SEC. II. That it shall be the duty of said public printer to print the laws and journals of the General-Assembly, and such bills, reports, and other documents, as either branch of the General-Assembly may order to be printed, during his term of office; he shall also be entitled to do the printing of all extra-sessions of the legislature, which may convene during his term of office.

54. SEC. III. The said public printer shall have executed at the seat of

government all printing ordered during a session of the legislature, and shall give bond in the sum of \$10,000, with two good and sufficient securities, to be approved by the governor, conditioned for the prompt and faithful execution of the work, according to the condition of this act.

What work must be done at the seat of government.

55. SEC. IV. All bills ordered to be printed by either house, shall, unless otherwise directed, be printed upon paper that can be written upon; the sections and lines to be numbered, with a sufficient margin and entering [*inter-vening*] space, to admit of interlineations and amendments; for which extra service his excellency shall allow said printer an extra compensation, not exceeding twenty per cent. upon the rates allowed by law.

Bills to be printed on writing paper.

Extra pay allowed.

56. SEC. V. The laws and journals shall be printed upon small-pica type and good paper, and shall be delivered to the executive within ninety days after the manuscripts of the laws have been placed in the hands of said printer by the compiler. The pages of the journals shall be of the dimensions prescribed in the act of 1836, and the laws shall be printed in the style specified in the act of 1852.—[See 63, 64, etc.]

Size of type and quality of paper.

Dimensions of page.

57. SEC. VI. In case said printer shall faithfully perform his duties, according to the provisions of this act, he shall be compensated according to the provisions of the fourth section of the act of 1836, entitled "an act to provide for the election of public printer," &c. And for the extra expenses incurred in publishing the laws, in the superior style required by the act of 1852, he shall have an additional compensation, in proportion to the additional expense incurred.

If the duty of the Printer be faithfully performed, extra pay allowed.

58. SEC. VII. Should any delay occur in the execution of the work, or in the prompt delivery of the laws and journals, the governor shall have power to deduct at the rate of ten per cent. per month, from the face of the bill, for the particular work so delayed, until the date of its delivery. If the delay should be protracted beyond six months, then the governor shall have full power to dismiss said printer from office and to enforce the penalty of his bond, and to appoint a successor, who shall be subject to all the penalties and liabilities embraced in the provisions of this act.

Governor may deduct for delay.

Governor may dismiss Printer for protracted delay.

59. SEC. VIII. It shall be the duty of the secretary of the senate and clerk of the house [*of representatives*] to furnish the manuscripts of their respective journals, properly prepared for the press, within twenty days after the adjournment of the legislature, under a penalty of five hundred dollars each, to be deducted from their pay.

Secretary and Clerk's duty as to time of delivering manuscripts.

60. SEC. IX. It shall be the duty of the compiler to furnish said printer with a fair copy of the laws, notes, resolutions, &c., as required by the act of 1852, [see 65] within forty days after the adjournment of the legislature. It shall be his duty to read the proofs of said laws, and carefully compare them with the certified acts.

Compiler's duty.

Must read proof, etc.

61. SEC. X. There shall be printed, until otherwise ordered by law, four thousand copies each, of the journals of the senate and of the house [*of representatives*] and five thousand copies of the laws, the latter to be bound by the printer, according to the provisions of the act of 1852. The governor, however, may order such additional copies, as in his opinion, the public interest may require.

Number of Laws and Journals to be printed.

Governor may order more.

62. SEC. XI. That in case the present public printer shall perform his duties according to the requirements of this act, his excellency the governor of the State, shall cause him to be compensated, according to the foregoing provisions.

Printer may be compensated by order of the Governor.

SEC. XII. That all laws and parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to prescribe the manner in which the Laws of this State shall be printed and published. *Approved Jan. 12, 1852.*

*Whereas*, the body of the Statute Laws of this State is increasing so rapidly as to render any future Digest of the same, almost impracticable. *And whereas*, it is important and desirable that the Acts of each successive Legislature, shall be published in so convenient and durable a form as to constitute, from this time, a series of statutes, at large—

Statute-Laws  
how to be  
printed.

63. SEC. I. *Be it enacted*, That it shall be the duty of the public printer, for the time being, to print and publish the acts of the present, and all future legislatures, in a form uniform in size, and in style, equal in mechanical execution, to the new digest of the statute laws of Georgia.

Governor to  
have Laws  
bound.

64. SEC. II. That in order to preserve the laws from destruction, it shall be the duty of his excellency the governor, to have the same bound, at a price not exceeding thirty cents per volume.

Governor to  
appoint Com-  
piler; his  
duty.

65. SEC. III. That it shall be the duty of his excellency the governor, to procure some fit and proper person to prepare the several acts for publication, whose duty it shall be to distinguish the public laws from those that are private and local; to arrange the public laws under appropriate titles; to prepare for publication, side-notes and head-notes, for convenience of reference; to add notes referring back to such previous legislation as may be modified or repealed. And notes, giving the decisions of the supreme court, upon that subject matter since the last publication of the laws, together with a copious index.

AN ACT to amend the several acts now of force, in reference to the Public Printer.—*Approved March 1, 1856.*

Act of 1854  
re-enacted.

66. That the act on this subject, approved February 16, 1854, is hereby re-enacted and made of force, so far as the same can apply to the Printer elected by the present General-Assembly.

#### SALARIES OF CERTAIN OFFICERS REDUCED.

AN ACT to reduce the compensation of the Members of the General Assembly; the Salary of his Excellency the Governor, and other Public Officers therein named.—*Approved Nov. 11, 1841.*

State-House  
Officers.

68. SEC. III. The salaries of the Secretary of State, the Treasurer, Comptroller-General and Surveyor-General, hereafter to be elected, shall be sixteen hundred dollars each, per annum.

SEC. IV. [Judges of the Superior Courts—*see* 71.]

Central Bank  
and Peniten-  
tiary.

69. SEC. V. The salaries of the officers of the Central Bank and officers of the Penitentiary, shall be reduced at and after the rate of twenty per centum on the amount now allowed by law.

State-Print-  
er's salary  
reduced.

70. SEC. VI. From and after the passage of this act, the compensation of State-printer shall be reduced at and after the rate of twenty per cent. on the amount now allowed by law.

SEC. VII. All laws or parts of laws militating against this act, be and the same are hereby repealed.

NOTE.—By the act of Dec. 26, 1826, (omitted,) the State-House Officers received, each, as their salaries, two thousand dollars. And by that act, the perquisites previously allowed, were required to be paid into the Treasury; by the foregoing act the salaries of these officers are fixed at sixteen hundred dollars, without perquisites, of course. By the following statute several of the Public Officers have had their salaries increased, but the Legislature has not thought proper to increase the salaries of the State-House Officers; it would seem to be justice to them, that their salaries should be restored to the amount allowed by the act of 1826. Their salaries are payable quarterly, according to the act of 1826.

AN ACT to increase the Salaries of the Executive and of the Judges of the Supreme and Superior Courts of this State.—*Approved Dec. 22, 1857.*

*Whereas*, an enlightened and liberal policy on the part of the State, as well as justice to our co-ordinate Departments of Government, commend to our attention the propriety of an increase of their salaries—

71. SEC. I. *It is therefore enacted*, That the salary of the Executive of the State of Georgia, shall be four thousand dollars, annually. The salaries of each of the Judges of the Supreme Court, shall be three thousand and five hundred dollars, annually. The salary of each of the Judges of the Superior Court, shall be twenty-five hundred dollars, annually.

Governor's Salary.

Judges Supreme Court.  
Judges Superior Court.

SEC. II. That all laws militating against the foregoing enactment, be and the same are hereby repealed.

#### SECURITIES OF PUBLIC OFFICERS.

AN ACT in relation to Public Officers and their sureties.—*Approved Dec. 27, 1845.*

72. In all cases hereafter, when the surety or sureties to any bond given by any officer for the performance of public duties, shall give notice in writing, to the governor, of a desire to be relieved from further liability; or the surety or sureties, shall in the opinion of the governor, become insufficient, it shall be the duty of the governor, to require of such officer, new sureties altogether; or surety in place of the surety desiring to be released, or that may be insufficient. And in case any officer shall fail to comply with the requisition of the governor, in the premises, he shall be dismissed from office, and the vacancy occasioned by such dismissal, filled as in case of vacancy from other cause.

Surety of Public Officer may be relieved by the Governor.

Insufficient security how remedied.  
Governor may dismiss Officer.

#### OVER-PAYMENTS AT THE TREASURY.

AN ACT to appropriate money in case of over-payments at the Treasury.—*Approved Dec. 24, 1845.*

73. *Be it enacted*, That all money paid into the treasury as an excess, on account of insolvent lists; or, by mistake; or, when two grants shall have issued for the same lot, shall be drawn therefrom according to law, and reported by the proper officers to each General-Assembly, as over-payments made at the treasury.

Over-paym'ts how drawn and reported.

#### STATE LIBRARIAN.

AN ACT to authorize the Governor to appoint a Librarian for the State Library, and to fix the salary of the same. Also, to compensate the Clerk of the Supreme Court for his services as Librarian, heretofore rendered.—*Approved Dec. 17, 1847.*

74. SEC. I. *Be it enacted*, That his excellency the governor, be and he is hereby authorized to appoint some fit and proper person to act as State Librarian, who shall be paid the sum of one hundred dollars per annum, for his services.—[See 75.]

Public Librarian; his Salary.

AN ACT to appropriate money for the support of the Government for the political year of eighteen hundred and fifty-eight, and for other purposes therein named.—*Approved Dec. 21, 1857.*

75. SEC. XI. *And be it further enacted*, That the sum of one thousand dollars be and the same is hereby appropriated for the year 1858, for the increase of the State-library, to be expended by his excellency the governor, in selecting and purchasing such books as he may think necessary.

\$1000 to increase Public Library.



Pay of Libra'n. And the further sum of six hundred dollars, for the year 1858, to pay the State Librarian.

### COUNTY OFFICERS.

AN ACT for the appointment of County Officers.—*Approved Feb. 16, 1799.*

Sheriffs and other Officers may be removed from office by the Governor. 1. SEC. III. On the representation of two-thirds of the justices of the inferior court, and of the county; or by sentence of impeachment, his excellency the governor be and he is hereby authorized to remove any of the aforesaid sheriffs from office. And he shall and may remove from office, any coroner or county surveyor, on like representation of two-thirds of the justices of the inferior court, and of the county. The governor shall and may also, remove any of the aforesaid clerks [*of the respective counties,*] county-surveyors or coroners from office, on conviction of the offender or offenders, for mal-practice in office.

AN ACT supplementary to the foregoing.—*Approved Dec. 4, 1799.*

Election of County Officers, who are voters. 2. SEC. II. In future all elections for county officers, to wit: the clerks of the superior and inferior courts, sheriffs, coroners and county-surveyors, shall be by the citizens of the respective counties, who are entitled by law to vote at elections for representatives, or members of the legislature of this State. And shall be opened, conducted and closed, in the same manner that elections are, for members of the legislature of this State.

Elections how conducted. Vacancies, how filled. 3. SEC. III. If a vacancy should take place in one of the aforesaid offices, it shall be the duty of the justices of the inferior court, or any two or more of them, to give notice in one or more of the public gazettes, or at the court-house, and three or more of the most public places in the county within which such vacancy may happen, twenty days previous to the election for filling up the said vacancy; and the person so chosen shall continue in office no longer than his predecessor would have done, [*see 17.*] And where any two or more candidates for any county-office shall have the highest and an equal number of votes, the presiding justices shall certify the same to his excellency the governor, who shall be and he is hereby authorized, to appoint one of the persons so having an equality of votes.—[*But see 37.*]

In case of tie, Governor to appoint.

AN ACT to authorize the Clerks of the Superior and Inferior Courts, Clerks of the Courts of Ordinary, Sheriffs, Coroners and Surveyors, to hold their offices during the intervention between the election and commissioning of their successors, and to regulate the transfer of papers and moneys.—*Approved Dec. 13, 1809.*

Whereas, considerable evils may result from the suspension of duties incumbent upon the clerks of the superior and inferior courts, clerks of the courts of ordinary, sheriffs, coroners and county-surveyors; for remedy whereof—

County Officers to officiate *ad interim.* 4. SEC. I. *Be it enacted,* That the aforesaid officers shall perform all the duties of their respective offices during the time intervening between the election and commissioning of their successors, with all the responsibilities to which they were liable, previous to the said election.

When to apply for their commissions. 5. SEC. V. It shall be the duty of the officers elected as aforesaid, to make application to the executive for their respective commissions, within twenty days after their having been elected to either of the said offices.—[*See 7.*]

AN ACT to alter the time of holding the Elections of County-Officers in this State.—*Approved Dec. 16, 1811.*

6. SEC. I. The elections for sheriffs, clerks of the superior and inferior courts, county-surveyors and coroners, of the respective counties within this State, shall be held on the first Monday in January, 1814, and on the first Monday in January every second year thereafter, in each and every of the said counties respectively.

Elections for  
County Offi-  
cers when  
held.

AN ACT to compel the [*officers named in the act*] to take the oath and give the security required by law, within the time therein specified.—*Approved Dec. 16, 1811.*

Whereas, by the laws now in force in this State, some inconvenience has, and may again happen, with respect to the time which ought to be given to the clerks elect [*and other officers named in the act*] to qualify ; for remedy whereof—

7. SEC. I. *Be it enacted*, That from and immediately after the passing of this act, the said clerk of the superior and inferior courts, sheriffs, county-surveyors, coroners, collectors and receivers-of-tax-returns, shall be bound in ten days after they are notified of the arrival of their commissions, to take the oath and give the security required by law.

County Offi-  
cers to qualify  
within ten  
days.

AN ACT to amend and repeal the 2d and 3d section of an act—[*act of Dec. 13, 1809—see County-Funds, etc.*].—*Approved Dec. 6, 1813.*

8. SEC. III. All sheriffs, coroners and clerks of any of the courts of this State, shall at any and all times be subject to the order and rule of said courts, after they have retired from their respective offices, in such cases and in like manner as they would have been had they remained in office.—[*See 45.*]

Ex-Officers  
subject to or-  
der of Court.

AN ACT to legalize and make valid the acts and proceedings of Sheriffs and Clerks in this State, in certain cases therein expressed.—*Approved Dec. 6, 1813.*

Whereas, the XLVIth section of the judiciary law of this State, passed in the year 1799, requires that before any sheriff shall enter upon the duties of his appointment, and being commissioned by the governor, he shall be bound for the faithful performance of his duty, by himself and deputies, before any of the said judges, to the governor of the State for the time being, and his successors in office, jointly and severally, with two good and sufficient securities, inhabitants and freeholders of the county, to be approved of by the justices of the inferior court or any three of them, in the sum of twenty thousand dollars. And whereas, a custom has heretofore prevailed with the executive department of this State in issuing the *dedimus potestatem* to qualify the sheriff, to direct the same only to two or more justices of the inferior courts of the several counties, in consequence of which the bond in many cases, given by the sheriffs and their securities, do not appear to have been attested by, or approved by, more than two justices of the inferior courts. And as doubts and difficulties may and probably will, at some future day arise, respecting the legality of the acts and proceedings of sheriffs, when their bonds do not appear to have been approved by more than two justices, as aforesaid, and the proceedings of the courts, in the several counties, may be called in question; for remedy whereof—

9. SEC. I. *Be it enacted*, That in all cases where persons have been elected sheriffs, in the several counties in this State, and have been commissioned by the governor, taken the oath of office, and have given bond and security which has been approved by any one or more of the justices of the inferior courts, in

Informalities  
in Sheriffs'  
Bonds, in  
certain cases  
cured.



the county in which such person shall have been elected and commissioned, and the person so commissioned and qualified has acted as sheriff, that then and in that case, all official acts done and performed by him or his deputies, and all judicial proceedings in the courts, in the several counties, during the time such person acted as sheriff, shall be taken, held and deemed as legal and valid, as if the aforesaid act of 1799, had been fully complied with in taking the bond and otherwise qualifying the sheriffs aforesaid. Any law, usage or custom, to the contrary notwithstanding.

*And whereas*, some doubts exist with regard to the legality of the official acts of the several clerks and sheriffs of the different counties in this State, which have been transacted since the 18th day of October last—

Certain Acts  
of Sheriffs,  
until their  
successors  
were qualified,  
made valid.

10. SEC. II. *Be it therefore enacted*, That all official acts of any and all sheriffs and clerks, in this State, since the aforesaid 18th day of October last, shall be deemed, held and considered, as legal and valid in law, as if such doubts had not, or did not exist. And they shall continue to act in their several official capacities until their successors are elected, commissioned and qualified.

AN ACT to legalize the proceedings of the Superior and Inferior Courts of the respective counties of this State, and to render valid the acts of the public officers of the same.—*Approved Dec. 18, 1816.*

Certain Judi-  
cial and Min-  
isterial acts  
declar'd valid.

11. SEC. I. The judicial proceedings of the superior and inferior courts of the several counties in this State, as well as the acts of the sheriffs, clerks and other public officers of the several courts, shall be, and they are hereby declared to be efficient, legal, valid and binding, notwithstanding any judge of the said superior courts, justice or justices of the inferior courts, sheriff or sheriffs, clerk or clerks, of any of the said several counties, hath or have not taken and subscribed the oath directed to be taken and subscribed in the act, entitled "an act to compel all officers, civil and military, within this State, to take and subscribe an oath to support the Constitution thereof," passed 16th day of February, 1799.

Omission of  
the Oath not  
to invalidate  
subsequent  
acts.

Oath to be  
taken by all  
Officers, Civil  
and Military.

12. SEC. II. This act shall extend to and have the effect of legalizing and rendering valid all past proceedings and acts of said courts and officers, as well as all other proceedings and acts of said courts and officers, which may take place and be had, from and after the passing of this act.

13. SEC. III. All officers, civil and military, in this State, shall take an oath to support the constitution of this State, and of the United States. And the form of said oath so to be taken and subscribed, shall be forwarded with the *dedimus* to qualify the said officer, or be taken and subscribed at the time of receiving said commission.

SEC. IV. [Repeals the former act on this subject.]

AN ACT to vest the appointment of Commissioners of Academies, Vendue-Masters, Notaries-Public and Lumber-Measurers, in certain persons therein mentioned.—*Approved Dec. 18, 1816.*

*Whereas*, the present mode of appointing the aforesaid officers, is very inconvenient, and occasions an unnecessary consumption of the time of the legislature—

Appointment  
of certain Of-  
ficers, by  
whom made.

14. *Be it enacted*, That from and after the passing of this act, the appointment of commissioners of academies in this State, shall be and is hereby vested in the commissioners of the respective academies. The appointment of vendue-masters, notaries-public and lumber-measurers, shall be and is hereby vested in the commissioners of the respective incorporated towns, or the persons in said towns, in whom the corporate powers are vested. And where there is no corporation or commissioners, the appointment of said vendue-



masters, notaries-public and lumber-measurers, shall be made by the inferior courts of the respective counties, whenever such officers are deemed necessary and authorized by law.—[*See 22.*]

AN ACT to carry into effect the 4th and 5th sections of the 3d Article of the Constitution of the State of Georgia.—*Approved Dec. 21, 1819.*

15. SEC. I. There shall be five justices of the inferior court in and for each county in this State, who shall be elected on the 3d Tuesday in October, in the year of our Lord 1821, who shall be commissioned, and hold their respective offices until the 1st Monday in January, in the year of our Lord 1825, and until their successors shall be elected and qualified. On which said first Monday in January, 1825, the justices of the inferior courts shall be again elected, and from thence, on the first Monday in January, in every fourth year thereafter; by the electors entitled to vote for members of the General-Assembly. Which elections shall be held and conducted in the same manner as pointed out by law for the election of clerks and sheriffs. And the persons so elected shall be commissioned by the governor, and continue in office for the term of four years, and until their successors are elected and qualified, unless removed by impeachment for mal-practice in office, or by the governor on the address of two-thirds of both branches of the General-Assembly. And when any vacancy shall happen, by death, resignation or otherwise, of any of the justices of the inferior court, it shall be the duty of two or more of the justices of the inferior court, or justices of the peace, of the county in which such vacancy or vacancies shall happen, to give at least twenty days' notice, by advertisement at three or more public places in such county, previous to the election to fill such vacancy or vacancies; which election shall be held and conducted in the same manner as by this act expressed.

5 Justices of the Inferior Court in each County; how elected.

To be commissioned.

Resignations provided for.

16. SEC. III. All elections for justices of the inferior court shall be holden at the place of holding the superior courts in the respective counties. And all elections for justices of the peace shall be holden at the usual place of holding the justices' courts, in the respective company districts.

Elections for Justices, where held.

17. SEC. IV. Where any person or persons shall be elected to fill the vacancy of any justice of the inferior court, or justice of the peace, the person so elected and commissioned, shall continue in office only for the time for which their predecessors were elected.

Vacancies filled for the term.

AN ACT to carry into effect the sixth section of the fourth Article of the Constitution.—*Approved Dec. 20, 1823.*

18. No collector, sheriff, coroner, clerk of the superior court, clerk of the inferior court, or any other person who is or may be a holder of public moneys, and elected to any office, shall be commissioned by the governor, or be qualified by any judge, justice of the inferior court or justice of the peace, until he shall produce to his excellency the governor, and also, the judge, or justice of the inferior court, or justice of the peace before whom he appears to be qualified, a certificate from the treasurer of the State, countersigned by the comptroller-general, certifying that he has accounted for and paid into the treasury, all sums for which he is accountable and liable. Which certificate shall in each and every case, accompany the *Dedimus Potestatem*.

Holder of public moneys not to be commission'd.

And whereas, various persons are holders of public moneys, where no evidence exists in the treasurer's or comptroller's office of such fact—

19. SEC. II. In addition to the oath of office, the person elect shall swear, "that he is not the holder of any public moneys, unaccounted for."

Oath to be taken.

20. SEC. III. All collectors and other officers hereafter elected, shall apply for and obtain their commissions and certificates, and qualify, within the time, and in the manner heretofore pointed out by law, [*see 5 and 7,*] or their

Officers must apply for their Commissions



within a given time or lose their office. offices shall be considered as vacant, and shall be filled in such manner as is now prescribed by law. And the person who has failed to obtain his commission and certificate aforesaid, within the time prescribed by law, shall not be considered as entitled to be a candidate for the office: *Provided*, that this act shall not be construed to effect the election of any collector who may be in arrears for the amount of his insolvent list only, and who had not an opportunity of having such list allowed from the failure of any court.

AN ACT to amend and explain an act entitled "an act to vest the appointment of Commissioners of Academies, Vendue-Masters, Notaries-Public and Lumber-Measurers, in certain persons therein mentioned," passed the 18th December, 1816.—*Approved Dec. 22, 1823.*

County and Town authorities to fill certain offices and vacancies. 21. From and after the passing of this act, the inferior courts, corporations and commissioners, respectively, as mentioned in the above-recited act, shall have the exclusive power of appointing any number of the officers therein mentioned, [*see* 14,] that they may deem expedient, in their respective counties and towns, where the number is not defined or limited by law. And also, the exclusive power of filling all vacancies which may occur among such of said officers whose numbers are limited by law.

SEC. II. [Repeals all repugnant acts, and confirms appointments subsequently made by the legislature.]

AN ACT to vest in the Inferior Courts of the several counties of this State, the exclusive right to appoint Notaries-Public for their respective counties.—*Approved Dec. 20, 1824.*

Inferior Court to appoint Notaries-Public. 22. From and immediately after the passing of this act, the justices of the inferior courts of this State, shall have the sole and exclusive right to appoint notaries-public for their respective counties, and to qualify the person or persons so appointed, by administering to him or them the oath prescribed by law, as heretofore administered to notaries-public.

Names to be registered. Clerk's fee. 23. SEC. II. It shall be the duty of the clerks of the inferior courts of the several counties of this State, to keep a register of the names of persons appointed notaries-public by virtue of this act, in their respective counties. And said clerks shall be entitled to have and receive from the person so appointed, as a compensation for the service so rendered, the sum of two dollars.

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to appoint County-Treasurers and define their duties.—*Approved Dec. 24, 1825.*

Inferior Court to appoint a Treasurer. 24. The justices of the inferior court in the several counties in this State, may, on the first Monday in January next, and biennially, on the first Monday in January, or as soon thereafter as convenient, appoint some fit and proper person, other than the clerk of the inferior court, [*see* 34,] as county-treasurer, who shall, before he enters upon the duties of his office, give bond with security, to the justices of the inferior court, for the faithful discharge of his duty, in such sum as they shall prescribe, not less than double the amount of funds in hand and the annual revenue of the said county. And shall, moreover, take an oath, well and truly to discharge the duties of his said office.

And take an oath. Sheriff and other Officers must pay over moneys to Treasurer. Failing, to pay 20 per cent. interest. 25. SEC. II. It shall be the duty of the tax-collectors, sheriffs, clerks of the superior and inferior courts, justices of the peace, coroners, and all and every other person or persons who may have, or hereafter shall have, in his or their hands, any money belonging to the said county, to pay the same over to the said county-treasurer, on or before the 15th day of December, in each and every year; (and on failure thereof, to pay twenty per cent. interest on

all sums which they, on final settlement, may be in arrears for;) who shall give a certificate of the same, directed to the clerk of the inferior court, who shall receive the same and receipt therefor, and shall enter the amount of the said certificate in a book to be kept for that purpose, together with the name of the person in whose favor it is given, and shall keep the same, on file, in his office. Receipt to be given by Treasurer.

26. SEC. IV. It shall be the duty of the county-treasurer, to pay without delay, all orders passed by the inferior court and directed to him, provided he has funds so to do. And shall, upon paying the same, take a receipt upon such order, for his justification, and shall keep the same, on file, in his office. To pay orders of the Infer'or Court.

27. SEC. V. The said county-treasurer shall keep a book in which he shall exhibit, on the debtor side, all sums of money paid out by him, the time when paid, and the persons to whom paid. And upon the credit side, all sums of money received by him, the persons from whom received, and on what account the same has been received. Which book shall at all times be open to the inspection of the court, or any person interested. Treasurer to keep a book, etc.  
Book may be inspected.

28. SEC. VI. It shall be the duty of such county-treasurers, to exhibit to the grand-jury, at the superior court first held in each year, a statement of the county-funds; containing a detailed account of the several objects and amounts of expenditures, with the vouchers therefor, including the balance either way, from the year preceding. And the justices of the inferior court, or a majority of them, shall have power to issue execution against such county-treasurer and his securities, for the amount in his hands, on his failing to pay or account therefor, within ten days after written notice from such justices, to that effect. Treasurer to make exhibit to Grand-Ju'y.  
Executi'n may be issued ag'st Treasurer.

29. SEC. VII. Nothing in this act shall be so construed as to abrogate the office of trustees of the poor-school-fund, created by the act approved the 22d of December, 1823, [*office abolished*,] or to interfere with the academy-funds of the county. Abolished by Act of 1843.  
Acad'y-funds.

30. SEC. VIII. The inferior court shall pay to the said treasurer, such sum for his services, as may appear to them reasonable and just, so as not to exceed two and a half per cent. on any moneys received by him, neither shall he exceed that amount for disbursing the same.

### *County-Treasurer's Bond.*

STATE OF GEORGIA, } We, *Charles H. Heywood*, as principal, and  
Houston County. } *Richard Roe* and *John Smith* as securities, all of  
the County and State aforesaid, acknowledge ourselves held and bound to *John Ragin, Charles Anderson, John D. Winn, William F. Postell, and William T. Swift*, Justices of the Inferior Court of said County, for the time being, and their successors in office, in the sum of *ten thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *Charles H. Heywood*, has been appointed County-Treasurer of the said County of *Houston*. Now, should said *Charles H. Heywood*, well and truly, faithfully discharge and perform, all and singular, the duties of his said office of County-Treasurer, agreeably to law, then this obligation to be void; otherwise, of force. This *May 1, 1859*.

In open Court—  
*John H. King, Clerk.*

CHARLES H. HEYWOOD, *prin'l.* [L.S.]  
RICHARD ROE, *sec'ty.* [L.S.]  
JOHN SMITH, *sec'ty.* [L.S.]



*Oath of County-Treasurer.*

"You, *Charles H. Heywood*, do solemnly swear (or affirm as the case may be) that you will well and truly, discharge and perform, all and singular, the duties of County-Treasurer of this County. That you will support and defend the Constitution of this State and of the United States. And you do further swear, that you are not the holder of any public moneys unaccounted for—so help you God."

NOTE.—This oath ought to be written out in the Minutes of the Court, signed by the deponent, and countersigned by the Clerk. This must be done in open Court.

*County-Treasurer's Certificate.*

STATE OF GEORGIA, } *To John H. King, Clerk of the Inferior Court of*  
*Houston County.* } *said County.*

This is to certify that *John D. Halstead*, Sheriff of said County, has paid into the County Treasury, the sum of *one hundred* dollars, collected by said Sheriff, as a fine imposed upon *William H. Talton* for *contempt of Court*, by the Judge of the Superior Court of said County, at the last term of said Court. This *June 1, 1859.*

CHARLES H. HEYWOOD, *Treasurer.*

*Clerk Inferior Court's Receipt.*

STATE OF GEORGIA, } CLERK'S OFFICE, INFERIOR COURT,  
*Houston County.* } *June 1, 1859.*

Received, of *John D. Halstead*, Sheriff of said County, the Certificate of *Charles H. Heywood*, Treasurer of said County, for *one hundred* dollars, paid *this day*, into the County Treasury by said Sheriff. That amount being collected from *William H. Talton*, as a fine imposed upon him for *contempt of Court*, at the last term of the Superior Court, for said County. Recorded in book A.

JOHN H. KING, *Clerk.*

AN ACT to alter the mode of filling the vacancies of Sheriffs, Clerks of the Superior and Inferior Courts, and Tax-Collectors. And [to] provide for filling the vacancy of Receiver-of-Tax>Returns.—*Approved Dec. 26, 1826.*

Vacancy in  
office of She'ff,  
etc., provided  
for.

31. From and immediately after the passage of this act, when any office of sheriff, clerk of the superior or inferior court, tax-collector, or receiver-of tax-returns, in any of the counties of this State, may become vacant, by death, resignation or otherwise, it shall be the duty of the justices of the inferior court, or any two or more of them, to give notice at the door of the court-house, and at three or more of the most public places of said county, within which such vacancy may happen, twenty days previous to said election, for filling said vacancy. Which said vacancy shall be filled by persons entitled to vote for members of the legislature of said county. And the person so elected shall be commissioned by the governor, in conformity with the laws now in force in this State, on that subject. And the person so chosen shall continue in office no longer than his predecessor would have done.—[See 46.]

Term of office.

In case of tie,  
another elec-  
tion to be  
held.

32. SEC. II. When any two or more candidates for any of the aforesaid offices, may have the highest and an equal number of votes, the presiding justices or superintendents at said elections, shall certify the same to the justices

of the inferior court of the county where such election may be held, whose duty it shall be, forthwith to advertise another election, giving notice as prescribed in the first section of this act.

33. SEC. III. In the interim, from the time said vacancy may happen, up to the time a successor may be elected and qualified, according to the foregoing provisions, (in cases where it may be necessary,) the justices of the inferior court of the county where said vacancy may happen, is [*are*] hereby authorized to attend at the court-house of said county, and appoint some fit and proper person to discharge the duties of said office, until such vacancy may be filled according to the foregoing provisions, who shall be compelled to give bond and security and take the usual oath.—[*And see 47, 48 and 49.*]

Inferior Court  
to fill vacancies in certain  
cases.

SEC. IV. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT amendatory to and explanatory of the several acts now of force in this State, in relation to the creation of County-Treasurers, &c.—*Approved, Dec. 31, 1838.*

*Whereas*, the existing laws now of force in this State, creating county-treasurers, defining their respective duties and liabilities, are variously construed; some inferior courts recognizing them as imperative to appoint another beside the clerk of the inferior court, for their treasurer; while other courts regard it as permissive only, and placed entirely within the discretion of the courts, to do the one or the other. *And whereas*, under the latter construction, no law provides for taking any bond or recognizance on the part of the clerk, where he shall be held and deemed the legitimate county-treasurer, as aforesaid, for the faithful execution of his trust as county-treasurer, whereby the whole finances of a county are placed entirely in the hands of said county-treasurer, without proper guarantees of fidelity—

34. SEC. 1. *Be it enacted*, That whenever it shall so happen that the justices of the inferior court or courts of any county or counties of this State, or a majority of them, shall decide that they are not inhibited from retaining their clerk as county-treasurer, then and in that case, they shall nevertheless, proceed to take proper bond and security of said clerk, in like manner as is pointed out for county-treasurers generally.

Clerk of the  
Inferior Court  
to give bond  
when acting  
as County  
Treasurer.

35. SEC. II. The said clerk, acting as county-treasurer, shall be required to pass all receipts for moneys received by him, and in all respects conform to all the duties pointed out for other county-treasurers.

SEC. III. All laws militating against this act, be and the same are hereby repealed.

AN ACT to alter and amend an act entitled “an act to alter and amend so much of the fourth section of an act, approved December 23, 1789, as relates to the amount of County-Surveyors’ Bonds,” assented to Dec. 26, 1842.—*Approved Dec. 25, 1847.*

36. SEC. I. From and after the passage of this act, that all county-surveyors hereafter elected in the several counties of this State, shall give bond and security in the sum of one thousand dollars, instead of three thousand dollars, as is now required by said amended act.

Amount of  
County Surveyor's Bond.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *County-Surveyor's Bond.*

STATE OF GEORGIA, } We, *John Laidler* as principal, and *John Smith*  
Houston County. } and *Claiborn Bateman* as securities, all of the State  
and County aforesaid, acknowledge ourselves held and bound to his



Excellency *Joseph E. Brown*, Governor of said State for the time being, and his successors in office, in the sum of one thousand dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, the above-bound *John Laidler*, has been elected Surveyor of the County of *Houston*. Now, should the said *John Laidler*, well and truly behave himself, and well and truly do and perform, all and singular, the duties of his said office, by himself and assistants, according to law and his oath of office. And swear, or cause to be sworn, all chain-carriers by him employed, then the above obligation to be void; otherwise of force. This *May 1, 1859*.

Approved—  
*John Ragin, J. I. C.*  
*Charles Anderson, J. I. C.*  
*John D. Winn, J. I. C.*

*JOHN LAIDLER, prin'l. [L. S.]*  
*JOHN SMITH, sec'ty. [L. S.]*  
*CLAIBORN BATEMAN, sec'ty. [L. S.]*

### *Oath of County-Surveyor.*

“I, A B, do solemnly swear, that I will, to the best of my skill and knowledge, discharge the duty of Surveyor for the County of *Houston*. And that I will not admeasure, survey or lay out; or knowingly admit or cause to be admeasured, surveyed or laid out, any Land, without a Warrant first obtained for that purpose. And I do further swear, that I will support and defend the Constitution of the State of Georgia and the Constitution of the United States. And I do further swear, that I am not the holder of any public moneys unaccounted for—so help me God.”

AN ACT to authorize and empower County-Surveyors to administer Oaths in certain cases.—*Approved Dec. 29, 1838.*

County Sur-  
veyor may ad-  
minister  
Oaths.

37. SEC. I. *Be it enacted*, That from and after the passage of this act, county-surveyors, when called on to admeasure and lay off dower, or divide lands held in common or joint-tenancy, shall be and they are hereby authorized and empowered to administer the oaths prescribed by law, in such cases.

SEC. II. All laws militating against this act, be and the same are hereby repealed.

### *Oath of Chain-Carrier.*

“You do solemnly swear (or affirm, as the case may be,) that you will faithfully and impartially, do and perform, all and singular, the duties required of you as Chain-Carrier, in the *contemplated* survey, to the best of your skill and ability—so help you God.”

### *Warrant to County-Surveyor.*

STATE OF GEORGIA, } *By the Court of Justices for said County; to John*  
*Houston County.* } *Laidler, County-Surveyor of said County.*

You are hereby authorized and required to admeasure and lay out, or cause to be admeasured and laid out, unto *Mitchell Taylor*, a tract of Land, which shall contain *three hundred* acres, in the County aforesaid,

(*here describe the buttings and boundings of the Land, as particularly as may be.*) taking special care that the same has not heretofore been laid out to any other person or persons. And you are also, hereby directed and required, to record the Plat of the same in your office, and transmit a copy thereof, together with this Warrant, to the Surveyor-General, within the term of six months from this date.

*Witness our hands and seals, this May 1, 1859.*

*John H. King, Clerk.*

JAMES MACK, J. P. [L. S.]

JOHN DOE, J. P. [L. S.]

JOHN SMITH, J. P. [L. S.]

NOTE.—By the act of 1789, (*see title Land*,) it is provided that “Any three or more Justices of the Peace in their respective counties, shall use and exercise the powers given to four Justices and an Assistant-Justice,” by the act of 1783. And by the act of 1842, it is provided that “the Clerk of the Inferior Court of each County, is hereby declared to be the Clerk of the Land-Court.” This Court, by the act of 1843, (*see Executors and Administrators*,) is required to sit, “for the trial of Caveats,” on the “second Monday in January annually;” that is, the Land-Court sits, (by the act of 1830,) in the several Counties, on the first Tuesday in each month, except the month of January, when, by the act of 1843, (for the trial of Caveats,) previously referred to, it sits on the second Monday in January.

### *Caveat in Land-Court.*

STATE OF GEORGIA, }

*Bullock County.*

*To the Land-Court of said County.*

The Petition of *John Doe*, of said County, sheweth, that heretofore, on the *first* day of *January*, eighteen hundred and *fifty-eight*, *Richard Roe*, of said County, applied, in due form of law, and received a Warrant of Survey, directed to the Surveyor of said County, requiring said Surveyor to lay off and admeasure to said *Richard Roe*, *five hundred* acres of Land, in the County aforesaid, [*here set out plainly and distinctly, the boundaries of the Land, as they are set out in the Warrant of Survey.*] And your Petitioner sheweth that said Surveyor proceeded to lay off said Land, as in said Warrant of Survey, he was required to do. Your Petitioner hereby enters his Caveat against said Survey, and the issuing of a Grant therefor, for the following reasons:—

*First*—Because, [*here state the ground of objection to the Survey, fully and at large.*]

*Secondly*—Because, etc.

For which reasons Petitioner objects to said Survey, and prays that the same may be set aside and annulled. This *January 1, 1859.*

THOMAS FELDER, *Att’y pro Caveator.*

NOTE.—A large portion of the Lands of the State of Georgia have been granted under Head-Rights and the Land-Courts apply, principally to the adjustment of controversies arising under these surveys.

AN ACT to add an additional section to the act supplementary to the act for the appointment of County-Officers, approved December 4, 1799.—*Approved Jan. 22, 1852.*

37\*. SEC. I. *Be it enacted*, That the following section be added to the said act—That in case, when any of the elections provided for in said act, or any election for Ordinary, or any county-officer hereafter to be elected by the people, shall be contested; on due proof of the grounds on which said election shall be contested being made before the governor, it shall be his duty to

In contested elections Governor may commission the person having the highest number of votes.



commission the person having the highest number of legal votes, or order a new election, as the circumstances of the case may require.

AN ACT to compel Judicial Officers to turn over to their successors in office, all Books received from the State.—*Approved Feb. 17, 1854.*

Ex-officers  
must turn  
over to their  
successors.

38. SEC. I. *Be it enacted*, That from and after the passage of this act, all judicial officers who by law are entitled to receive from the State the statute-laws, journals of the legislature, supreme court reports, digests, or any other book, pamphlet or paper, published or purchased by the legislature, and distributed among said judicial officers, it shall be their duty, upon retiring from office, to deliver over to their successors, all books and other documents, pertaining to their office, then in their hands, that may have been received from the State, by them whilst in office.

Or may be  
sued for the  
same.

39. SEC. II. That upon the refusal of any out-going officer to deliver and turn over to his successor any book, as stated in the first section of this act, after demand made by the in-coming officer, he shall be held liable for the value thereof. And the same recovered against him in any court of law in this State, by suit for debt, in the name of the successor, for the use of the State.

AN ACT to allow certain persons therein named to administer Oaths and attest Deeds.—*Approved Feb. 7, 1854.*

What officers  
may adminis-  
ter oaths.

40. SEC. I. *Be it enacted*, That in all cases, where by law an oath is required to be taken, the same may be administered by any judge of the superior court, justice of the inferior court, justice of the peace, ordinary, clerk of the superior or inferior court, or notary-public.

AN ACT to lay out, form and organize the County of Charlton, from the County of Camden. And to permit Civil and Military Officers in new Counties, created at the present session, to be qualified before any person authorized by law, to administer oaths.—*Approved Feb. 18, 1854.*

Oaths in New  
Counties.

41. SEC. VII. That all civil and military officers elected in any and all the new counties, created during the present session, may take the usual oath of office before any person qualified by law, to administer an oath.

AN ACT to authorize the Justices of the Inferior Court, for the several Counties of this State, to elect the Clerk of the Court of Ordinary.—*Approved Dec. 21, 1839.*

Officers of  
other Coun-  
ties may act  
in certain  
cases.

42. SEC. III. If any county shall refuse to elect a Clerk or Sheriff, for sixty days after a vacancy shall have occurred in either of said offices, that suitors and plaintiffs may apply to any clerk or sheriff, of an adjoining county, and have the required duty performed by them, or either of them, in the same manner, as a clerk or sheriff in said county, might have done.

SEC. IV. All acts or parts of acts militating against this act, be, and the same are hereby repealed.

AN ACT to extend the provisions of an act entitled "an act to facilitate the recovery of Money out of the hands of Sheriffs, Coroners, Justices of the Peace, Constables, Clerks of the Superior and Inferior Courts, and Attornies-at-Law, passed December twenty-third, eighteen hundred and twenty-two, to certain cases therein named.—*Approved Dec. 11, 1841.*

Officers to pay  
20 per cent.  
per annum af-  
ter Rule Ab-  
solute.

43. SEC. I. That from and immediately after the passage of this act, that whenever a rule absolute shall be obtained against any sheriff, coroner, justice of the peace, constable, clerk of the superior or inferior court, or attorney-at-law, for the payment of money; when such money shall not

be promptly paid, that such demand shall thereafter draw an interest at the rate of twenty per cent. per annum.

44. SEC. II. All deputy-sheriffs shall be liable to be ruled and attached, Deputy Sheriff in the same way and manner as sheriffs; but the liability of the sheriff iff may be shall not be affected by any such proceeding against his deputy, where the Ruled, etc. same is not effective.

45. SEC. III. It shall be lawful for the judges of the superior courts of Rules in Vacat- this State, justices of the inferior court and justices of the peace, upon tion. application, to grant rules *nisi*. against all officers, in vacation, which may be served as heretofore practised.

46. SEC. IV. Whenever any sheriff or his deputy, is a party to said Special Officer rule, or interested therein, and there be no coroner, or other lawful officer may be ap- of said county, to execute the same, it shall be the duty of the judge, or pointed in cer- justice or justices of said court, to appoint *pro tempore*, a special officer, tain cases. to carry out and effectuate the order of said court; which said officer, so appointed, shall be allowed the usual fees of sheriffs, for like service.

SEC. V. All laws and parts of laws militating against this law, be and the same are hereby repealed.

AN ACT to provide for the filling vacancies in the Offices of Clerks and Sheriffs, in the several Counties of this State; and for other purposes.—  
*Approved Feb. 20, 1854.*

47. SEC. I. That from and after the passage of this act, whenever the office of sheriff, or of clerk of the superior or inferior courts, of any of the Vacancies in certain Offices, how filled. counties of this State, shall be vacant, either from failure to elect, qualify, resignation, death, or any other cause whatsoever, and when there are not three commissioned and qualified justices of the inferior court of the county, or when they fail to fill such vacancy by an appointment, it shall and may be lawful for the judge of the superior courts of the district in which such county is situated, to fill the vacancy, by the appointment of any citizen of said county, or of this State, who shall hold the office until such sheriff or clerk shall be elected and qualified according to law. Vacancy to be filled by the Judge of Superior Court, when Inferior Court fails.

48. SEC. II. That such appointment, shall be made in writing, under Appointment, how made and entered. the hand and private seal of the judge, either in term-time or vacation, and shall be spread on the minutes of the court, at the first term thereafter.

49. SEC. III. That the sheriff or clerk so appointed, shall give such Bond and Security to be given, etc. bond as shall be approved of by the judge, both as to amount and security; and shall be entitled to and invested with all the powers and privileges, and perform all the duties of a sheriff or clerk, duly elected according to law, and receive the same fees.

50. SEC. IV. That if any sheriff, in any county in this State, [*shall*] Sheriff failing to keep Docket, how punished. fail to keep dockets, as he is now required to keep, by the laws of this State, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be fined in a sum not less than fifty dollars, nor more than one hundred dollars.

SEC. V. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the relief of Sheriffs, Coroners, Constables and other Officers of the State of Georgia.—*Approved Dec. 9, 1843.*

51. SEC. I. *Be it enacted*, That whenever any officer shall arrest a defendant on a *capias ad satisfaciendum*, and said defendant shall make his escape, and said officer shall be compelled to pay the amount due on said *capias*, by reason of said escape; the sheriff, coroner, constable, or other Officer made liable for escape, to have control of *fi. fa.* against the Defendant.



officer, as the case may be, shall have the control of the *fieri facias* issued, or to be issued, on the judgment upon which said *capias ad satisfaciendum* is founded, for the purpose of re-imbursing himself out of the property of defendant. And the said sheriff, coroner, constable, or other officer, as the case may be, shall control said *fieri facias*, in as full and ample a manner, for the purpose of said re-imbusement, as the plaintiff in said *fieri facias* might or could do, or could have done, had said *capias ad satisfaciendum* not have issued, or had the money due on said judgment, not have been paid by said sheriff, coroner, constable, or other officer: *Provided*, that the court by whose order or judgment, such officer shall be required to pay the amount due, shall pass an order giving such control.—  
[See next Act.]

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to give to Rules Absolute against Officers in this Sate, a lien upon property. And to give Officers the control of Executions, in certain cases.—*Approved Dec. 11, 1858.*

Rule Absolute, lien upon the property of the Officer. 52. SEC. I. That any rule absolute which has been, or may hereafter, be obtained against any officer in this State, shall have the same lien upon the property, both real and personal, of the officers, as ordinary judgments at law, and the plaintiffs may have, either an attachment or execution, issued therefrom; and may have either of said process returned, and the other issued at pleasure.

Officer compelled to pay execution, to have the control of it, etc. 53. SEC. II. That in all cases where officers have been, or may hereafter be, compelled to pay money on any execution, (by rule absolute,) when he has not collected the same from the defendant, such officer shall have the control of such execution, for the purpose of re-imbursing himself, and be subrogated to all the rights of the plaintiff in execution.

SEC. III. [Repeals conflicting laws.]

AN ACT to authorize the Return of Sheriffs, Constables, Coroners and Justices of the Peace, to be Traversed. And to point out the manner in which they shall make Returns.—*Approved Dec. 22, 1840.*

Return to be made on oath. 54. SEC. I. That from and after the passage of this act, whenever any sheriff, constable, coroner, or justice of the peace, shall make a return or showing, under or by virtue of any rule or order, of any judge of any superior court of this State, the same shall be made on oath, to be taken at the time of making such return or showing. And the party calling for such return or showing, shall be at liberty to traverse the truth of such return or showing; and upon such traverse, an issue shall be formed and tried by a jury, as in the case of other traverses.

And may be Traversed.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to authorize and require the Sheriffs, Coroners, Clerks of the Superior and Inferior Courts, and Courts of Ordinary, in the several Counties in this State, to advertise in certain News-papers.—*Approved Feb. 22, 1850.*

Officers must advertise in certain News-papers. 55. SEC. I. That the sheriffs, coroners, clerks of the superior and inferior courts, and the clerks of the courts of ordinary, in the several counties in this State, are hereby authorized and required, to advertise their sales, citations, and proceedings of their respective courts, in some newspaper published in their counties, respectively; and if there be no such paper published in the county, then in the nearest news-paper, having the

largest or a general circulation, in the county. And no such officer shall change the advertising connected with his office, from one paper to another, without first giving notice of his intention to do so, in the paper in which his advertisements may have been published. Must not change without giving notice thereof.

56. SEC. II. All deputies of sheriffs, or other officers herein mentioned, shall advertise in the same papers in which their principals advertise. Deputy to do so too.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to facilitate the recovery of Money out of the hands of Sheriffs, Coroners, Justices of the Peace, Constables, Clerks of the Superior and Inferior Courts, and Attorneys-at-Law.—*Approved Dec. 23, 1822.*

57. From and after the passage of this act, it shall be the duty of the sheriffs, coroners, justices of the peace, constables, clerks of the superior and inferior courts, and attorneys-at-law, in this State, upon application, to pay to the proper person or persons, his, her or their attorney, any money or moneys they may have in their hands. And if not promptly paid, the party or parties entitled thereto, his, her or their attorney, may serve said officer with a written demand for the same; and if not then paid, for such neglect or refusal, the said officer shall be compelled to pay at the rate of twenty per cent. per annum, upon the sum he has in his hands, from the date of such just demand, if good cause be not shown to the contrary. Certain Officers having in their hands Money collected, liable to pay 20 per cent. if they do not pay upon demand and Notice.

58. SEC. II. A copy of said demand produced in court, verified by affidavit, stating when and where the original was served upon the officer, shall be *prima facie* evidence of the date and service thereof.

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

### *Demand.*

JOHN DOE } *Fi. Fa. issued from Houston Superior Court.*  
           *vs.* } Amount of Principal, \$500; Interest, \$75.  
 RICHARD ROE. } Georgia, Houston County.—To John L. Halstead,  
*Sheriff* of said County.—You are hereby notified and required to pay over to me *instantly*, as the Attorney of the Plaintiff, the Money raised on the above *fi. fa.* and now in your hands. If this money be not promptly paid, I shall require of you twenty per cent. per annum, until it be paid. This *May 1, 1859.*

JAMES A. PRINGLE, *Pl'ff's Att'y.*

### *Affidavit of the Attorney.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
           Houston County. } *James A. Pringle, Esq.,* who, being sworn, saith,  
 that on the *first* day of *May*, eighteen hundred and *fifty-nine*, in the town of *Perry*, he served *John L. Halstead*, Sheriff of said County, with a copy of the above demand.

Sworn to and subscribed, }  
 before me, this *October 20, 1859.* }  
           *James Mack, J. P.*

JAMES A. PRINGLE.

Copy, under affidavit, 'prima facie' evidence.

AN ACT to enable the Corporation of Savannah to collect certain Fines vested in them by law, and to levy a Tax on Vendue Masters, in the said City. And to protect persons confined in jail.—*Approved Nov. 26, 1802.*



Prisoners not to be Ironed, etc. 59. SEC. III. *And be it further enacted*, That from and after the passing of this act, no jailer shall put any person into irons, unless he is confined for a capital offence, and it is so expressed in the warrant.

## CHAPTER XII.

### COUNTY FUNDS AND RECORDS.

ACT OF DECEMBER 13, 1809.

Liability of ex-officers for office-papers. 1. SEC. IV. The said successor shall not be liable for any papers not contained in said last schedule [see 3], but his successor shall be liable as aforesaid, in the same manner, during the time intervening between the election and commissioning of his said successor, as he was previous to said election.

Records to be kept in well bound Books. 2. SEC. VI. It shall be the duty of the clerks of the superior and inferior courts, and the clerks of the courts of ordinary, to keep their records in books well bound.

ACT OF DECEMBER 6, 1813.

Schedule of Books and papers, made out and delivered to successor. SEC. I. [Repeals so much of the 2d and 3d sections of the foregoing act, as directs the Clerks of the Superior and Inferior Courts, and Courts of Ordinary, to return a schedule of their office-papers, thirty days before the election.]

3. SEC. II. It shall be the duty of the clerks aforesaid, to deliver over to their successors in office respectively, all the books and papers appertaining to their respective offices, within five days after their successors are qualified: *Provided*, that the said clerks shall make out and deliver to their successors in office respectively, upon oath, a fair and correct schedule, of all the papers relative to any unfinished business in their said offices respectively, in term-bundles; and all other papers and books appertaining to said office, in good order.

AN ACT to define the duty of the Justices of the Inferior Courts in regard to the Books of Record of their respective counties. And to define the duties of the Clerks of the Superior and Inferior Courts, with respect to County Funds.—*Approved, Dec. 16, 1815.*

*Whereas*, much injury may be sustained by the citizens of this State, from important matter being recorded on loose paper, or books unbound and subject to come to pieces in a short term of years—

Inferior Court to furnish Officers with record-books. 4. SEC. I. *Be it enacted*, That it shall be the duty of the justices of the inferior courts, to purchase or cause to be purchased, out of the county funds, a sufficient number of well bound blank volumes, for the clerks of the superior, inferior, and courts of ordinary, of their respective counties; and that it shall be their duty, to letter or cause to be lettered and indexed, said volumes, as they in their judgment may think proper, and have them immediately entered on the minutes of the court.

Schedule of Books to be annually recorded. 5. SEC. II. The justices aforesaid, shall at the expiration of each year, cause said clerks to produce a schedule of the books in their respective offices, and have the same duly recorded.

Clerks to exhibit annually 6. SEC. III. It shall be the duty of the clerks of the superior and inferior courts of the several counties in this State, to lay before the inferior court of

their respective counties, at the first annual session of said courts, a correct statement of the several sums of money received for county rates or taxes, or fines, forfeitures, impositions, license, or otherwise; in such method as that the net proceeds of the whole revenue of such county, and the amount of the several disbursements, in discharge of the several demands against such county, may distinctly appear. And if any of the said clerks shall divert, misapply or conceal any of the money belonging to such county, he shall forfeit and pay to and for the use of such county, double the money he shall be found so to have diverted, misapplied or concealed; to be recovered before any court having jurisdiction of the same [see 14]. And it shall further be the duty of said clerks, to record such statement of the county funds, in proper books, to be provided at the expense of such county.

to the Inferior Courts a statement of certain moneys.

Forfeiture for neglect.

Such returns to be recorded.

AN ACT to compel Clerks of the Inferior Courts in this State to pay over money deposited in their hands.—*Approved Dec. 19, 1816.*

7. SEC. I. From and after the passage of this act, it shall and may be lawful for the justices of the inferior court, or a majority of them in each county respectively, of this State, when any clerk of the inferior court may or shall refuse, or neglect, to pay over any money or moneys belonging to the county funds, deposited or paid to him for the use of the county for which he is the clerk, to issue an execution against such clerk and his security or securities, directed to the sheriff, (or officer authorized to execute the same,) commanding him to levy the same on the estate, both real and personal, belonging to the said clerk, and his security or securities, as the case may be, or so much thereof as will be sufficient to satisfy such execution and costs thereon. And such other proceedings shall be had thereon, as are usual on other executions issued upon judgments.

Executi'n may be issued ag't defaulting Clerk.

AN ACT to compel Clerks of the Inferior Courts, that now or hereafter may be in office, to give receipts for all sums of money by them received for county purposes. To compel County Officers to take receipts for any sum or sums by them received and paid for county purposes; and return or deliver over such receipt or receipts to the clerk of the superior courts of the several counties, within a certain time. And to require the several clerks of the superior courts of this State to keep a fair and regular file and entry of the same, to be laid before their several Grand Juries, whenever called for.—*Approved Dec. 18, 1820.*

8. SEC. I. From and after the 25th day of December, 1820, that it shall be the duty of all clerks of the inferior courts of any county within this State, to give a receipt or receipts for any sum or sums of money by them received of and from any officer, or other person whatsoever, for county purposes, or for moneys on any account, belonging to the county.

Clerks of the Inferior Co'ts must receipt for moneys.

9. SEC. II. It shall be the duty of all county officers, or any other person or persons who may receive any sum or sums of money, arising from the sale or sales of estrays, (or other means, when such money belongs to any county,) shall pay the same over to the clerk of the inferior court of such county, and shall take a receipt or receipts from the clerk of the inferior court of the several and respective counties; which receipt the officer, or other person paying the money, is hereby directed to demand, and the said clerk required to give. And the officer or person paying the money and taking the receipt or receipts, shall return the same to the clerk of the superior court of the county where the money was paid, within twenty days from the payment of the same.

County funds to be paid to Clerk Inferior Court; (now to County Treasurer.)

Receipt to be filed with Cl'k Superior Co't.

10. SEC. III. It shall be the duty of the clerks of the superior courts within this State, to receive and keep a regular and fair file in office, and

Book of receipts to be



kept and sub- enter in a book to be kept by them for that purpose, all such receipts by  
mitted to them received, to be laid before their several grand juries, whenever called for  
Grand-Jury. by said grand juries. Any law or custom to the contrary notwithstanding.

Cl'k Superior 11. SEC. IV. For each receipt received, filed and entered upon such  
Court's fees book, the clerk of the superior court of any county, who may receive the  
for entering same, shall receive the sum of twelve and one-half cents, out of the county  
Receipts. funds of such county where such receipt may be filed and entered in said book,  
and shall be allowed the same on presenting a statement of his account to the  
inferior court, and when passed by such court, the same shall be entered in the  
books of account kept by the clerk of the inferior court.

Penalty for 12. SEC. V. For each and every neglect or violation of the foregoing act,  
neglecting the party neglecting or violating the same shall, upon conviction, be fined in a  
duty. sum of not less than one hundred dollars, nor more than five hundred dollars.

NOTE.—The duties devolved upon the Clerk of the Inferior Court by the above statute,  
apply, since the creation of the office of County-Treasurer, more appropriately to the in-  
cumbent of that office. The same remark may be made, touching the following statute.

AN ACT to compel the Clerks of the Inferior Courts, in the several counties in  
this State, annually at the first term of the Superior Court, in their respec-  
tive counties, to make and exhibit to the Grand-Jury, a statement of the  
County Funds, showing the receipts and expenditures of their said counties,  
for the preceding year.—*Approved, Dec. 22, 1823.*

Clerk of the 13. It shall be the duty of the clerks of the inferior courts, in the several  
Inferior Co't, counties in this State, annually, at the first term of the superior court, in their  
(now County respective counties, to make and exhibit to the grand-jury a full and complete  
Treasurer,) to statement of the county funds; showing the receipts and expenditures of their  
make annual said counties for the preceding year. In which statement they shall not only  
exhibits of specify all the moneys by them received and paid out, but the names of the  
county-funds persons from whom the same has been received, and for and on what account  
to Gra'd-Jury. the same has been paid out.

Failure, to be 14. SEC. II. Every clerk failing and neglecting to comply with the requi-  
account'd mal- sitions of this act, may for the said offence be presented by the grand-jury for  
practice. mal-practice in office; upon which said presentment it shall be the duty of the  
Party how attorney or solicitor-general to prosecute as in other cases of presentments by  
prosecut'd and grand-juries, for offences punishable by law. And on conviction, the said clerk  
punished. may be fined, or fined and removed from office, at the discretion of the court.

Clerk's com- 15. SEC. III. The justices of the inferior court shall allow their said  
pensation. clerks such compensation as is reasonable and just, for their services requir-  
ed by this act.

SEC. IV. All laws and parts of laws militating against this act, are  
hereby repealed.

AN ACT to authorize the Inferior Courts of the several counties in this  
State, to transcribe the records of the Superior Courts and Inferior  
Courts, and of the Courts of Ordinary of said counties. And more fully  
to define the duties of the Clerks of the Superior Courts and Inferior  
Courts. And to provide a remedy for the non-performance of such  
duties.—*Approved Dec. 22, 1829.*

Defaced rec- 16. Whenever it shall be made known to the inferior courts of the sev-  
ords to be eral counties in this State, that the records of the superior and the inferior  
transcribed, courts, and courts of ordinary, or of any of said courts in their respec-  
and when ap- tive counties, have become obliterated, defaced or mutilated, it shall and  
prov'd to have the validity of may be lawful for said inferior courts to employ some fit person or per-  
the originals. sons, to transcribe such records into new books of a substantial nature.  
And such records, when so transcribed and approved by said inferior court,



upon their inspection, or upon the examination of any person or persons whom they shall appoint for the purpose, shall have all the validity and authenticity of the original records.

17. SEC. II. Whenever it shall appear to the inferior courts aforesaid, that the clerks of the said courts herein-before mentioned, have failed or neglected to copy into a book of record, all the proceedings in all civil cases in said courts respectively; or that the said proceedings have been partially and imperfectly copied, it shall and may be lawful for the said inferior courts to employ some fit and competent person or persons to copy the said proceedings into a book or books of record. And the said books of record, shall when approved by said inferior court, or by the person or persons by them to be appointed for the purpose of examination, have the same force, validity and authenticity, as if the said proceedings had been fully copied by the clerks aforesaid, within the time prescribed in the 34th section of the act of the General-Assembly, passed on the 16th day of February, 1799.

Incomplete records may be completed, and how.

18. SEC. III. The said inferior court, in the employment of a person or persons to transcribe the records, and to copy the proceedings, as herein-before directed, shall offer the same to the lowest bidder, due regard being had to the competency of the several persons proposing; and shall require bond with approved security, payable to the justices of the inferior court of the county, and their successors in office, in a penalty to be fixed by them, or any three of them, for the completion of the contract, at such time or times as shall be stipulated, and for the safe keeping and return of the books, documents and papers, that may be intrusted to him or them, for the purposes aforesaid.

To be let out to the lowest bidder.

Bond and security to be required.

19. SEC. IV. The inferior courts shall be authorized to institute a suit or suits in the superior court upon the bond or bonds of any clerk who has failed or neglected to copy into a book of record, all the proceedings in all civil cases in said courts respectively, according to the true intent and meaning of the said 34th section of the act aforesaid, or who shall hereafter fail or neglect to record the proceedings of said courts as herein-after required. And shall recover damages for the neglect or failure of such clerk, in the manner aforesaid, according to the rates for recording said proceedings in all the cases which such clerks shall have failed or shall fail to record, or which he shall have imperfectly recorded, or shall imperfectly record. And in case there be no valid bond of said clerk, it shall and may be lawful for said superior court to cause said clerk, by a rule or order of said court, to pay into the hands of the county-treasurer, such sum or sums of money as it shall appear to said court that such clerk has received, or shall receive, as fees for recording of proceedings, in cases which he has or shall, fail or neglect to record, or has or shall imperfectly record; and to enforce such order by process of attachment: *Provided*, when it shall appear that said clerk has not received the recording fees in any case or cases, the amount of such fees shall not be included in the damages herein required to be collected, nor in the sum herein directed to be paid.

Suits may be instituted against defaulting Clerk.

Damages recovered.

Clerk may be ruled.

20. SEC. V. The proceedings in all cases, criminal as well as civil, hereafter determined in the several courts of law and equity in this State, shall be fully and fairly copied by the clerks of such courts respectively, into record-books of a substantial nature, previous to the next term of such courts, after the adjournment of the court in which such cases shall be determined.

21. SEC. VI. It shall be the duty of the grand-juries in the several counties in this State, from term to term of the superior court, to inspect and examine the offices, papers and records, in the superior and inferior

Grand-Jury must inspect records, etc., and present delinquent Clerk.



courts of their counties; and if the said proceedings shall not have been copied into a book or books of record, according to the true intent and meaning of this act, they shall cause the clerk or clerks who shall have failed or neglected to do his duty, as required by this act, to be presented for non-performance of official duty. And the said superior court shall order the bond of such clerk to be prosecuted, and recovery shall be had thereon as directed in the aforesaid third section of this act. And if there be no bond, said court shall proceed against such clerk as in such case, is therein directed.

SEC. VII. All laws or parts of laws, militating against this act, are hereby repealed.

AN ACT to compel all County Officers holding public moneys to keep Books of Record of the Receipts and Expenditures of the same.—*Approved Dec. 26, 1831.*

22. SEC. I. As the public money is the property of the people, they have a right, at all times, to know how it is expended.

County Officers to keep a Book of Account; how the entries in said Book are to be made.

*Be it therefore enacted,* That from and after the passing of this act, all county-officers, in each county in this State, in whose hands any money belonging to the county or State shall come, shall prepare and keep a fair, good and substantial leather-bound book, in which they and each of them shall enter, in a regular and distinct manner, all moneys by them received on account of the State or county, or from any other public source; in such a way as may be seen how much, and at what time, the said money was received; and in like manner, how the same has been expended or disbursed; with the items of each expenditure; and at the expiration of every three months, the debit and credit side of such account shall be struck, so that the state of the account may be known.

Book to be exhibited to Grand-Jury.

23. SEC. II. It shall be the duty of the county-treasurer, or if none has been appointed, then the clerks of the superior or inferior courts, acting as such, shall at every second term in each county, lay before the grand-jury, a fair abstract from said book.

May be fined for neglect.

24. SEC. III. In case of neglect or failure of any of the aforesaid persons, to perform the duties hereby assigned them, then and in such case, they shall be liable to a fine of \$20 for each offence, to be recovered in any court of record having competent jurisdiction. The whole penalty to go to the person prosecuting the party offending.

Books open to the inspection of all persons.

25. SEC. IV. During the legal hours, all persons shall have access to, and a right to inspect the afore-mentioned books, and to take extracts therefrom; and the person keeping the same shall be entitled to receive twenty-five cents for each inspection. And should any of the aforesaid officers refuse any citizen an inspection of said books, such officer so offending, shall be liable to the penalty and prosecution as prescribed in the above-named section.

AN ACT in relation to the Public Records of Counties where they have been destroyed by fire, declaring that all Deeds and other instruments in writing that have been recorded shall be considered and taken as having been recorded upon sufficient proof of execution. And prescribing what shall be proof of the contents of Records so destroyed.—*Approved March 5, 1856.*

County Records being burnt, Deeds, etc., held to have been recorded on proof.

26. SEC. I. Where in any of the counties of this State, the public records of the county have been destroyed by fire, any deed or other instrument in writing that is found to have been recorded and the record burnt, such deed or other instrument in writing shall be taken and held to

have been recorded legally and upon sufficient proof of execution, in all the courts of this State.

27. SEC. II. Where any original deed, or other instrument in writing, is lost or destroyed, which has been recorded, and the record of such deed, or other instrument in writing, has been burned, the contents of such record may be proved by the clerk who recorded the deed, or other instrument in writing, or of any clerk who has copied said record, or by any other person who has read the same; and said testimony may be given in evidence to the jury, in any case where it becomes necessary for the assertment of the rights of any of the parties.

Where the record and original paper are destroyed, how proof of record may be ascertained.

28. SEC. III. Where the records of the proceedings of the courts of any of the counties of this State have been destroyed by fire, the contents of such records may be proved in the manner prescribed by the second section of this act, and given in evidence under the same circumstances.—  
[See next Act.]

Records destroyed by fire, how to be proven.

AN ACT to amend an act entitled “an act in relation to the Public Records of Counties, when they have been destroyed by fire,” &c., approved March 5th, 1856.—*Approved Dec. 11, 1858.*

Whereas, there is no provision in the above-named act, for recording a second time, such deeds and other instruments, whose records have been destroyed—

29. SEC. I. Therefore, the General-Assembly do enact, That where any deed, or other instrument in writing, has been recorded, or may hereafter be admitted to record, according to the laws of this State, and the record of such deed, or other instrument, may be, or has been, destroyed by fire, such deed, or other instrument, shall be admitted to a second record upon due proof of its first record. And such second record shall be held and considered in lieu of the first record, in point of time, and in every other respect.

Instruments recorded and Record destroyed by fire, may be again recorded.

#### COUNTIES.

AN ACT for building and keeping in repair the Court-Houses and Jails in the respective counties within this State. And for the support of the Poor.—*Approved Feb. 21, 1796.*

30. SEC. I. From and after the passing of this act, the justices of the inferior courts of every county within this State, in their respective counties, shall cause to be erected and kept in good repair, (or where the same shall be already built, shall maintain and keep in good repair,) at the charge of such county, one good and convenient court-house, of stone, brick or timber; and one sufficient jail, with the necessary apartments for the safe-keeping of criminals and debtors; well secured with iron bars, bolts and locks.

Court-house and Jail must be erected in each County, by the Inferi'r Court.

31. SEC. II. The inferior courts in each county shall have full power and authority, at all times, to inquire into the conduct of jailers and the state of jails in their respective counties, and on neglect of duty, to cause such jailers to be removed, by an order to the sheriff for that purpose. And the said courts shall have full power and authority to call on all persons, their heirs, executors or administrators, in their respective counties, who have had, or may have county-moneys in their hands, collected for the express purpose of building court-houses and jails, or for any other county purpose whatever. And in case of neglect or refusal to pay the same, the said court shall, and are hereby required to cause executions to be issued for the full amount appearing to be due, in the same manner as the treasurer is authorized by law to issue executions against the defaulting collectors of taxes, in the different counties. And such moneys, when col-

Shall inquire into the condition of Jail, etc.

Shall examine as to County-Money for building Court-House and Jail. Executions may be issued against defaulter.



lected, may be applied by such court to the uses and purposes of building and repairing court-houses and jails.

**Fines and money arising from the sales of Estrays, appropriated to County purposes.** 32. SEC. IV. All moneys that now are or may hereafter come into the hands of the clerks of the superior or inferior courts, by fines or forfeitures; and all moneys arising from the sale of estrays, are hereby made liable and subject to the draught or order of the several county-courts, to be appropriated and applied as aforesaid; either in the building or repairing court-houses and jails, or to the support of the poor, and building bridges, at the discretion of such courts.

**Former laws allowing the assessment of County Tax repealed.** 33. SEC. VI. All laws or parts of laws, clause or clauses, heretofore made, or such part thereof as authorize the county-courts of this State, to levy a tax for county purposes, be and the same are hereby repealed: *Provided*, that nothing in this act contained, shall extend or be construed to extend to have operation in the county of Chatham, so as to repeal or affect any law appointing the mayor [*and*] aldermen of the city of Savannah, commissioners of the court-house and jail, in the said county.

AN ACT to authorize the Justices of the Inferior Court of the several Counties in this State, to create and lay out any new Districts, or change and alter the lines of those already laid out.—*Approved Dec. 23, 1839.*

**Justices of the Inferior Court may lay out new Districts, etc.** 34. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, that whenever it shall be necessary to create and lay out any new district, in any of the counties in this State, the justices of the inferior courts, or a majority of them, of said county, shall proceed to appoint three commissioners, who shall be citizens of the district from which it is proposed to create or lay out the new district, whose duty it shall be to lay out and define the lines of said district, and report the same to the next inferior court of said county, for county purposes.—[*See 38.*]

**May change lines of old Districts.** 35. SEC. II. Whenever it is necessary to alter or change any of the lines of the districts now organized, or to define the same, that the justices of the inferior court of the several counties of this State, (or a majority of them,) shall appoint three commissioners, who shall be citizens of the districts between which the change in defining is proposed to be made, who shall proceed to lay out, or define, said line, and report the same to the next inferior court in said county, for county purposes.

**Surveyor may be employed; how paid.** 36. SEC. III. Whenever the commissioners appointed, as contemplated in the preceding sections of this bill, shall deem it necessary, they may engage the services of a competent surveyor, to assist in laying out any new districts, or change, or define any line, in pursuance of the foregoing sections, who shall be paid for his services as surveyor, out of the county-treasury.

**Report to be recorded.** 37. SEC. IV. Whenever the said inferior court, (or a majority of them,) shall approve the report of the before-mentioned commissioners, that they shall cause the same to be recorded on the minutes of said court, after which the district laid out, line changed or defined, shall be known and distinguished as such.

SEC. V. All laws or parts of laws militating against this act, be and the same are hereby repealed.

#### ACT AMENDATORY OF THE ABOVE.

AN ACT amendatory of an act entitled "an act to authorize the Justices of the Inferior Court of the several counties in this State, to create and lay out any new districts, or change and alter lines of those already laid out," assented to on the 23d Dec. 1839.—*Approved, Dec. 23, 1840.*

38. SEC. I. *Be it enacted*, That nothing in the afore-mentioned act,

shall be so construed as to admit of applications being made in manner aforesaid, to lay out any new district, or to change the lines of any district already laid out, only at a regular term of the inferior court. Applications to be made at regular terms.

39. SEC. II. As soon as any new district shall be regularly laid out and formed, agreeably to the provisions of the above-recited act, it shall be the duty of the clerk of the inferior court, of the county where such district is made, to immediately inform his excellency the governor of the same. Clerk must inform the Governor of the same. All laws to the contrary notwithstanding.

## CHAPTER XIII.

### DEEDS, ETC.—RECORDING.

AN ACT to prevent fraudulent Deeds of Conveyance.—*Approved March 7, 1755.*

*Whereas*, many inconveniences may attend the want or neglect of recording in the public offices of this Province, all Conveyances of Lands, Negroes and other chattels; or Mortgages of the same—

1. SEC. I. *Be it enacted*, That all conveyances of lands, tenements, negroes and other chattels, or hereditaments, whatsoever, or mortgages of the same, that were made before the passing of this act, shall be registered in the register of the records' office of this Province, within three months after the publishing of this act, except such as have been or may be hereafter executed in Europe, which shall be registered as directed by this act, within a twelve-month and a day; and except such as have been or may be hereafter executed in the West India islands, or on the American continent, north of South Carolina, which shall be registered, by this act, within six months. And such as may be hereafter made within this Province, be registered within the space of sixty days, from the date of the several deeds, conveyances or mortgages. In failure of which, all such as are lawfully and regularly registered, as aforesaid, shall be deemed, taken and construed to be prior, and shall take place and be recoverable in law, before any and every deed, conveyance or mortgage, which has not been lawfully registered, as above. Any law, custom or usage, to the contrary notwithstanding.

Conveyances when and where to be recorded. Mortgages must be recorded within three months, and other Deeds within twelve months, in the Clerk's office of the Superior Court.

And in order to discourage and deter all and every person and persons from making any fraudulent conveyances or mortgages—

2. SEC. II. *Be it enacted*, That if any vender or mortgager of lands, tenements, negroes or other chattels, or hereditaments, within this Province, shall presume to execute a second, or other deed of conveyance, or sale of the same lands, tenements, negroes or other chattels, or hereditaments, other than the first vender of such lands, tenements, negroes or other chattels or hereditaments, or a second or other deed of mortgage, (without having taken notice in the said deed of mortgage, of the first or prior mortgage or mortgages with which the said lands, tenements, negroes or other chattels, or hereditaments stand charged, at the time of executing the said deed,) all and every person and persons so offending, shall be tried and punished, and be subject to the like forfeitures and penalties, as the laws of that part of Great Britain called England, have provided against all such persons as shall execute deeds of mortgage without taking notice of all prior mortgages made.—[See 9.]

Fraudulent Deeds and Mortgages, how detected and punished.



Deeds, Wills, 3. SEC. IV. All deeds of conveyances, mortgages, wills or writings, that  
etc., already have been regularly entered, in the former office of record of this Province,  
recorded, shall be deemed lawful, to all intents and purposes; any thing in this act, or  
deemed legal. any other act contained, to the contrary notwithstanding.

NOTE.—Major Prince has the following Note on the foregoing statute: “All acts must govern the contracts made under them; it seems difficult to assign any period when those relating to conveyances may be considered as obsolete. Personal contracts, indeed, are generally disposed of by the statutes of limitation, but questions of title, especially to real estate, very frequently depend on the soundness of former titles, so that real property is held under, not only recent acts, but under those that have been in force at various periods heretofore. For these reasons, (besides those mentioned in the former edition,) it is deemed best not to mutilate the statutes on this subject, but to present them entire.”

AN ACT to extend the time of the operation of an act entitled “an act to authorize Bills of Sale to be proven, recorded and admitted in Evidence, in certain cases therein specified.”—Approved March 4, 1856.—*Approved Dec. 22, 1857.*

Act of 1856, 3.\* SEC. I. That from and after the passage of this act, an act entitled “an  
as to record- act to authorize bills of sale to be proven, recorded and admitted in evidence,  
ing Bills of in certain cases therein specified,” approved March 4th, 1856, shall be in full  
Sale, contin- force and effect for and during the space of two years, from the passage of this  
ued for two act. All laws or parts of laws militating against the provisions of this act, are  
years. hereby repealed.

AN ACT for confirming sales of Land in the Province of Georgia, by Attorneys or Agents, &c.—*Approved Feb. 8, 1757.*

*Whereas*, divers persons living out of this Province, are and have been owners of lands within the same, which persons have usually appointed attorneys to sell and dispose of such lands; to the end, therefore, that those who have so purchased, may from henceforth, be secured in their titles and estates—

Sales of 4. *Be it enacted*, That all sales of lands, tenements and hereditaments,  
Lands, etc., within this Province, heretofore made by any attorneys or agents, who have  
by Attorney been appointed and empowered by any person or persons, having a right so  
or Agent, to do, are and shall be deemed and adjudged good and effectual in law, to all  
heretofore intents, constructions and purposes whatsoever; as fully as if the said owner  
made, deemed or owners of such lands had, by their own seals and conveyances, actually and  
valid. really sold and conveyed the same. And all and singular, the lands, tene-  
ments and hereditaments, sold and conveyed, as aforesaid, shall be and remain  
to such purchasers, respectively; for such estate or estates as the owner or  
owners, so employing his or their attorneys or agents, had or ought to have  
had therein.

AN ACT to enable *Feme-Coverts* to convey their estates; and for confirming and making valid all Conveyances and Acknowledgments heretofore made by *Feme-Coverts*.—*Approved April 24, 1760.*

*Whereas*, the usual method of conveying lands and tenements in England, by *feme-coverts*, is by fine or recovery, which methods have not been practised in any of His Majesty's American Colonies. *And whereas*, instead thereof, it has been customary in the conveyances of lands by husband and wife, for the wife to acknowledge her consent before a judge or justice, being first privately examined by the said judge or justice, whether she acknowledged the same voluntarily and freely—

Conveyances, 5. SEC. I. *Be it therefore enacted*, That all alienations and conveyances  
etc., of Lands, whatsoever, which have, at any time heretofore, in this Province, been made,  
heretofore either by husband and wife having jointly signed a deed of conveyance before



witnesses, or by the acknowledgment of the wife of her consent to such a sale, of lands and tenements, before any of the then justices or magistrates, shall in such cases, be valid in law, and good and effectual against the husband and wife, their heirs and assigns, and against all other person or persons whatsoever, claiming under the said husband and wife, or either of them; to all intents and purposes, as if the same had been done by fine or recovery, or by any other way or means, in the law.

made by Husband and Wife, or acknowledged by the Wife, declared valid.

*And whereas*, it is necessary to secure the property of future purchasers of lands and tenements, as well as to prevent husbands disposing without the consent of the wife, what of right, did or would belong to them. *And whereas, also*, the method practised in England, in these cases, would prove exceedingly troublesome and very expensive to the inhabitants of this Province—

6. SEC. II. *Be it therefore enacted*, That from and after the passing of this act, all conveyances of lands and tenements, shall be made by deed of bargain and sale, or by deed of lease and release, or by deed of feoffment, enrolled or registered in the secretary's office of this Province, signed and sealed by the party conveying, before two or more witnesses, who shall likewise, sign their names to the said deed. And where a *feme-covert* has or may have any right in part or the whole of the lands and tenements to be conveyed, and the said *feme-covert* doth willingly consent to part with her right, by becoming a party with her husband, in the sale of such lands and tenements, in such cases as these, the said *feme-covert* shall become a party with her husband in the said deed of conveyance, and sign and seal the same before the chief justice, or assistant judges, or one of his majesty's justices of the peace, for the parish where such contracts shall be made, declaring before the said judge or justice, that she has joined with her husband in the alienation of the said lands and tenements, of her free will and consent, without any compulsion or force used by her said husband, to oblige her so to do; which declaration shall be made in the following words, or words to the like effect, viz.: "I, A B, the wife of C D, do declare, that I have freely and without any compulsion, signed, sealed and delivered the above instrument of writing, passed between D E and C D. And I do, hereby, renounce all title or claim of dower that I might claim, or be entitled to, after the death of C D, my said husband, to or out of the lands or tenements, therein conveyed. In witness whereof, I have hereunto set my hand and seal."—[See 10 and 15.] And the said judge or justice, shall and is hereby required, to endorse upon the deed, the acknowledgment of the same *feme-covert*, made before him, and to sign the same, and shall receive two shillings and sixpence sterling, fee for his endorsing and signing the same, and no more.

How to be made and registered hereafter.

How the Wife to join the Husband in the Conveyance.

Form of Conveyance and Relinquishment of Dower.

Judge must sign His fee.

7. SEC. III. All conveyances of lands and tenements, made and executed, and enrolled, and registered, according to the intent and meaning of this act, shall and are hereby declared valid in law, and good and effectual against the party conveying, or husband and wife, and their and every of their heirs and assigns, and against all other persons claiming by, from or under them, or any of them, to all intents and purposes, as if the same had been done by fine or recovery, or by any other way or means. Any laws, customs or usages, to the contrary notwithstanding.

Such Conveyances declar'd valid in law.

AN ACT to prevent fraudulent Mortgages and Conveyances; and for making valid all Deeds and Conveyances heretofore made, with respect to any defect in the form and manner of making thereof, with certain restrictions.—*Approved Dec. 24, 1768.*



*Whereas*, notorious frauds have been committed by evil disposed and designing persons, who frequently mortgage and borrow money on security of lands and slaves, having before conveyed, sold or mortgaged the same. And the recording of all deeds and conveyances of lands, tenements, negroes and other chattels, will greatly tend to the securing the titles of the proprietors or mortgagees, and prevent such frauds for the future—

Deeds of sale,  
etc. of real or  
personal prop-  
erty, to be  
recorded in  
the Secretary's  
Office within  
ten days.

8. SEC. I. *Be it therefore enacted*, That all and every deed and deeds of sale, mortgages or conveyances of any lands, tenements, negroes or other goods and chattels, heretofore made in this Province, and which shall be recorded in the secretary's office of this Province, within six months after the passing of this act, (except such as have been made and executed in any of the British islands, or in any of the other of the Colonies on the continent of North America, which shall be recorded within nine months; and except also, such as have been made and executed in Great Britain or Ireland, which shall be recorded within twelve months;) and all deeds of sale, mortgages [*or*] conveyances, made and executed within this Province, from and after the first day of January, next ensuing, being recorded, as aforesaid, within ten days after the execution thereof, shall be deemed, held and taken as the first deed of sale, mortgage or conveyance; and shall be allowed, adjudged and held, valid in all courts of judicature within this Province; any former or other sale, mortgage or conveyance, being of the same lands, tenements, negroes and other goods and chattels, and not recorded as aforesaid, notwithstanding.

Method of  
proceeding  
where there  
are more  
Mortgages  
than one.

9. SEC. II. *Provided always, and be it further enacted*, That nevertheless, if it shall so happen there be more than one mortgage at the same time, made by any person or persons to any person or persons, of the same lands and tenements, negroes, goods or chattels, the several late or under mortgagees, who shall have recorded their mortgages, his, her or their heirs, executors, administrators or assigns, shall have power to redeem any former mortgage or mortgages, recorded as aforesaid, upon payment of the principal debt, interest and cost of suit, to the prior mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns; anything contained to the contrary thereof, in anywise notwithstanding.

Equity of re-  
demption  
barred in cer-  
tain cases.

And all and every person and persons who shall mortgage the same lands, tenements, negroes, goods or chattels, a second time, (the former mortgage thereof being in force and not discharged,) and shall not discover to the second mortgagee, in writing, under his or their hands, shall have no relief, power or liberty of redemption whatsoever, in equity or otherwise, of and in the said after-mortgage, or mortgages.

Right of  
Dower pro-  
tected.

10. SEC. III. *Provided also, and be it further enacted*, That nothing in this act contained shall be construed, deemed or extended, to bar any widow of any mortgager of lands or tenements, from her dower and right in and to the said lands and tenements, who did not legally join with her husband in such mortgage, or otherwise lawfully bar or exclude herself from such her dower or right.

And to the end that no person may hereafter suffer any inconvenience in recording their title deeds, by exposing the defects thereof—

Formal defects  
not to vitiate  
Conveyances  
otherwise  
good.

11. SEC. IV. *Be it further enacted and declared*, That no deed of feoffment, bargain and sale, deed of gift or other conveyance, of any lands or tenements whatsoever heretofore made, shall be impeached or set aside in any courts of law or equity, for want of attornment or livery and seisin, or enrolment, or for that such conveyance hath been made by way of assignment or endorsement on any other deed or conveyance, without other ceremony; nor for any other defect in the form or in the manner of the execution of any such deeds or conveyances; or of the endorsements or assignments thereof, either



in the first deed or in any of the mesne conveyances derived therefrom.—[*See the next act.*] *Provided nevertheless*, that in case of the validity of such feoffment, bargain and sale, deed of gift or other conveyance of lands or tenements, shall be questioned, the legal and usual proofs shall be made, that the rights were and would have been in the person or persons conveying, if such defects had not happened in the form of such deeds or conveyances, or in the manner of the execution of the same, as aforesaid.

Validity of Conveyance being questioned, how settled.

12. SEC. V. This act shall continue and be in force for and during the term of three years, from and after the passing thereof, and from thence to the end of the next session of the General-Assembly, and no longer.—[*Perpetuated by the act of July 30, 1783.*]

Duration of this act.

AN ACT to render easy the mode of Conveying Lands. And for making valid all Deeds and Conveyances heretofore [*made,*] that may be deficient in point of form.—*Approved Feb. 22, 1785.*

*Whereas*, many deeds of bargain and sale, and other deeds of feoffment or conveyance, have been made, which have not been enrolled, or livery and seisin had; or may be deficient in point of form, when it was the legal intent of the party to sell and lawfully convey the same—

13. SEC. I. *Be it enacted*, That no deed of feoffment, bargain and sale and deed of gift, or other conveyance of lands or tenements whatsoever, heretofore made, shall be impeached or set aside in any courts of law or equity, for want of form, or livery and seisin, or enrolment, or for any other defect in the form, or in the manner of the execution of any such deeds or conveyances, either in the first deed or in any of the mesne conveyances derived therefrom, so that the right were and would have been in the person or persons conveying, if such defects had not happened in such conveyance, or in the manner of the execution of the same, as aforesaid.

No Deed to be vitiated or set aside for want of form or enrolment.

14. SEC. II. And to the end that such evils may be remedied in future—

*Be it enacted*, That all deeds of conveyances, by way of bargain and sale, *bonâ fide* (of lands, or tenements, and executed under hand and seal, in the presence of two or more witnesses, and a valuable consideration paid,) that are proved or acknowledged before a justice of the peace, or before the chief justice, or one of the assistant justices, [*see 77*] and the said deed is registered by the clerk of the court, in the county where such lands or tenements lie, in a book by him to be kept for that purpose, within twelve months from the date of such deed, [*at any time, see 47;*] for which he shall receive four pence per copy-sheet of ninety words: then and in that case, such deed of conveyance, by way of bargain and sale, shall be and the same is hereby declared to be good and valid in law and equity, according to the true intent, construction and meaning thereof: *Provided nevertheless*, that nothing herein contained shall extend or be construed to extend, to prevent any person or persons who shall prefer the former mode of conveyance, by way of lease and release, from using the same; or in the least to impeach or discontinue that form of conveyance, where the same shall be preferred by the parties contracting, as aforesaid; on condition only that the said deeds of lease and release, hereafter to be made, be duly registered in the county where the lands lie, within one year from and after the date of such deeds.—[*At any time; see 48.*]

Requisites of Deeds, etc. in their execution.

Must be recorded, and when.

Fee of the Clerk for recording.

Form of Lease and Release continued, if the parties prefer it.

15. SEC. III. And in case of Dower, *Be it further enacted*, That any such deed of conveyance of lands or tenements, in which a *feme-covert* may be interested, by dower or otherwise; and that such *feme-covert* doth voluntarily, with her husband, agree and sign, seal and deliver, before lawful evidence, such deed of conveyance, of any lands or tenements, as aforesaid; and also, before the chief-justice or any justice of the peace, on private examination, doth acknowledge and agree that she did, of her own free will and accord,

Relinquishment of Dower, how made.



subscribe, seal, and deliver the said deed, with an intention thereby to renounce, give up, and forever quit claim to her right of dower and thirds, of, into and to the lands or tenements therein mentioned, then and in that case, such deeds of conveyance, or bargain and sale, of lands and tenements, shall be held, deemed and considered, according to the construction and meaning thereof, to be good and valid in law and equity, and shall be and is hereby declared to be a free, full and absolute renunciation of dower and thirds. Any law, usage or custom, to the contrary notwithstanding.

How Special- 16. SEC. IV. All bonds, specialties, letters of attorney and other powers ties and in writing, which shall be produced in any court, or before any justices in this Powers of State, the execution whereof being proved by one or more of the witnesses Attorney, thereunto, by affidavit, or solemn affirmation in writing, before any governor, made in other States, are to chief-justice, mayor or other justice of either of the United States, where such be proven in bonds, letters of attorney, or other writings are or shall be made or executed, this State. and accordingly certified and transmitted under the common or public seal of

Title and resi- dence of party in every such affidavit or affirmation, there shall be expressed the addition of the party making such affidavit or affirmation, and the particular place of their abode.—[*And see 78.*]

Sales of Land 17. SEC. V. All sales or conveyances of lands, tenements [*and*] here- by Letters of ditaments, which shall hereafter be made by virtue of any letters or powers of attorney, duly executed, which do or shall expressly give power to Attorney, sell all lands or other estates, and be certified to have been proved, as declared to be aforesaid; or shall be proved in this State, before any justice of the peace, valid in law. by one or more of the witnesses thereunto, shall be good and effectual in law, to all intents, constructions and purposes whatsoever, the same as if the said constituent or constituents had, by their own deeds and conveyances, actually and really sold and conveyed the same: *Provided always*, that If made with- out notice of no sale of lands made by virtue of such power or powers of attorney or agency, as aforesaid, shall be good and effectual, unless such sale be made prior to the and executed while such powers are in force; and all such powers shall death of the be accounted, deemed and taken to be in force, until the attorney or agent constituent. shall have due notice of a countermand, revocation, or death of the constituent.

Mode of estab- 18. SEC. VI. It shall and may be lawful for any person or persons lishing title- whose titles, bonds, notes, books of accounts, receipts and papers, touching papers lost his, her or their estate and property, may have been lost or destroyed, during the late war, who shall produce a paper-writing, purporting to be during the a copy, or as near a copy of the original paper so lost or destroyed, as war of the aforesaid, with full or circumstantial proof of the substance thereof, and of Revolution. his, her or their title thereto, and shall lodge the same in the office of the clerk of the county where such person resides, or where the land in question is situate, and shall notify, by public gazette of this State, that such person or person intends to establish such deed or paper, that then it shall and may be lawful, (and in case no sufficient objection shall be made,) for the superior courts in each county, to establish the title and right of such person or persons, to the property alluded to by the testimony and papers offered to the said court, and be deemed as good evidence in law, so far as to give the party applying, a good right and title, until a better shall appear and be made out to the satisfaction of the court and jury, within the time limited by the act of limitation.

AN ACT To extend the Limitation of Actions, and for other purposes therein mentioned.—*Approved Feb. 1, 1788.*



*And whereas*, the time limited in an act entitled “an act to render easy the mode of conveying Lands, and for making valid all deeds and Conveyances heretofore, that may be deficient in point of form, and for other purposes therein mentioned,” has not allowed sufficient time for some of the purposes for which it was intended—

19. SEC. II. *Be it enacted*, That no deed of feoffment, bargain and sale, lease and release or other conveyance of lands and tenements, *bonâ fide* executed as directed by the said recited act, shall in any wise be affected by reason of the same not being registered or recorded in the respective offices where the lands lie, agreeably to the said act; but that every person or persons shall, and he or they hereby have full liberty and power to register or record his, her or their deed or deeds of conveyance of lands and tenements aforesaid, at any time within the term of two years from the date hereof. And the said deeds so registered or recorded, as last aforesaid, are hereby declared to be good and valid in law and equity, according to the true intent and meaning thereof. Any thing in the before mentioned act notwithstanding.—[See 48.]

Time for recording Deeds executed, extended to 1st Feb., 1790.

AN ACT to amend, explain and continue the “act for regulating the Judiciary Department of this State.”—*Approved Dec. 9, 1790.*

Extended to Feb. 1, 1793.

20. SEC. XIV. The “act to extend the limitation of actions, and for other purposes therein mentioned,” passed at Augusta, the first day of February, 1788, be and the same is hereby revived and continued until the first day of February, 1793, and no longer. [Remainder of this act repealed.]

NOTE.—By the Acts of 1837 and 1839, the time for recording is extended indefinitely, see 48 and 51: so that Deeds may be recorded at any time after their execution.

AN ACT to amend and explain an act entitled “an act to legalize and make valid certain acts of Sheriffs and Clerks, and to regulate the admission of evidence in the several Courts of Law and Equity in this State, so far as relates to certain papers.” Passed Dec. 15, 1810.—*Approved Dec. 10, 1812.* [The provisions of the above recited act are embodied in subsequent acts, with amendments.—*Com.*]

*Whereas*, the before-recited act does not sufficiently provide for all cases for which it was intended. *And whereas*, there is of record in this State, a number of deeds of conveyance which are only attested by one witness, and who has subscribed the same as a justice of the peace; and also, a great number which have been proven before a clerk of the superior court, who has subscribed himself as justice *ex officio*, or as clerk in his official capacity, in the recess of the court. *And whereas*, doubts have been entertained as to the propriety of admitting such deeds as evidence, in the several courts of law and equity in this State—

21. *Be it enacted*, That where any deed of conveyance has been attested by one justice of the peace, or a clerk of the superior court, and recorded in the time prescribed by law, the same shall be admitted as evidence in any of the courts of law or equity in this State, and as such, submitted to the jury. Any law, usage or custom, to the contrary notwithstanding.

Deeds attested by one J. of the P. or Clerk of the Superior Court and recorded, made valid.

AN ACT to regulate the admission of Evidence in certain cases, &c. And to provide for the recording of Conveyances of Personal Property.—*Approved Dec. 21, 1819.*

22. SEC. I. All laws and resolutions as published by authority, shall be held, deemed and considered, public laws and resolutions. And the several courts of law and equity of this State, shall take notice thereof, as such. Any law usage or custom, to the contrary notwithstanding.

Courts must notice *ex-officio* Laws and Resolutions.



Certificate of Public Officer to copy-paper, makes it evidence. 23. SEC. II. The certificate or attestation of any public officer, either of the State or of any county thereof, shall give sufficient validity or authenticity to any copy or transcript of any record, document or paper of file, in the respective offices, under their control or management, or to which they may be lawfully attached, to admit the same as evidence, before any court of law or equity in this State: *Provided nevertheless*, that nothing herein contained shall be so construed as to prevent any of the judges of the superior or inferior courts to require the original, or that it be accounted for.

Original must be accounted for.

Conveyances of personal property may be recorded. 24. SEC. III. All conveyances of personal property, duly executed, and bearing date after the passage of this act, may be recorded, and shall be admitted as evidence under the same rules and regulations as govern in cases of real property.—[See 51.]

AN ACT explanatory of the 5th section of an act passed Feb. 16, 1799, entitled “an act to carry into effect the sixth section of the third article of the Constitution. And to amend an act to carry into effect the sixth section of the fourth article of the Constitution, touching the Distribution of Intestates’ Estates; directing the manner of granting Letters of Administration, Letters Testamentary and Marriage Licenses, and to prevent Entails.” And to alter the rules for construing Conveyances generally.—*Approved Dec. 21, 1821.*

*Whereas*, doubts have arisen as to the true and proper construction of the fifth section of the above-recited act, it having been held by some that all Conveyances in fee-tail are rendered absolutely void by said section; and by others, that such Conveyances vest a fee-simple estate in the person or persons to whom they are executed; and again, by others, that they vest only a fee-conditional in common law. *And whereas*, it is proper that all doubts upon the subject should be immediately removed. *And whereas*, the intention of parties to contracts and Conveyances is often defeated, and great injustice done by construing the same according to the rules that now prevail, for remedy whereof—

Conveyances in Tail, to vest a fee-simple estate. 25. SEC. I. *Be it enacted*, That all gifts, grants, bequests, devises and conveyances, of every kind whatsoever; whether [*of*] real or personal property, made in this State, and executed in such manner, or expressed in such terms as that the same would have passed an estate tail in real property, by the statute of Westminster second, (commonly called the statute *de donis conditionalibus*,) be held and construed to vest in the person or persons to whom the same may be made or executed, an absolute, unconditional fee-simple estate.

Conveyances hereafter, to vest a fee-simple in the taker. 26. SEC. II. All gifts, grants, feoffments, bequests, devises and conveyances of every kind whatsoever, of real or personal property, hereafter made or executed within this State, shall be held and construed to vest in the person or persons to whom the same are made or executed, an absolute, unconditional, fee-simple estate, unless it be otherwise expressed, and a less estate mentioned and limited in such gift, grant, feoffment, bequest, devise or conveyance.

SEC. III. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to authorize the admission of certain Documents therein mentioned, as evidence, in the several Courts of this State.—*Approved Dec. 20, 1823.*

All instrum'ts in writing heretofore made and recorded, with certain in- 27. From and after the passing of this act, all deeds of conveyance, mortgages and other instruments of writing, heretofore proved by a subscribing witness or witnesses to the same, before any judge of the superior court, assistant-justice, justice of the inferior court or justice of the peace, shall if the witness or witnesses proving the same has not subscribed his, her or their name or

names to the probate or affidavit made (before such judge of the superior court, assistant-justice, justices of the inferior court or justice of the peace,) of the execution of the deed of conveyance, mortgage or other instrument of writing, and which shall have been duly recorded, be held, deemed and considered as legal and valid, to all intents and purposes; and admitted in evidence in any court of law and equity in this State, as if the said probate and affidavit had been subscribed by the witness or witnesses proving the same. Any law, custom or usage, to the contrary notwithstanding: *Provided*, that nothing in this act shall be construed to divest, or in any manner to affect any right which may have been vested or accrued by [*before*] the passage of this act.

formalities,  
declared good  
and valid,  
notwithstand-  
ing.

Vested rights  
protected.

AN ACT to admit certain deeds to record, and to authorize the same or copies thereof, to be read in evidence; and also, the copies of certain other deeds.—  
*Approved Dec. 23, 1826.*

28. From and after the passing of this act, all deeds for lands which may have been recorded upon the lawful affidavits of two or more subscribing witnesses, or by being subscribed and witnessed by one or more witnesses and a notary public, judge of the superior court, justice of the inferior court or justice of the peace, but not recorded within the time prescribed by the laws of this State, shall be admitted in evidence without further proof. And when the originals are lost or destroyed, and that being made judicially known to the court, copies of the same may be introduced and read in evidence on any trial before any court of law or equity in this State.—[*See 51 as to Bills of Sale.*]

Deeds, al-  
though not  
recorded in  
time, made  
evidence.

Original lost,  
copy may be  
used.

29. SEC. II. All deeds executed and proved according to the laws of this State, but not yet recorded, may nevertheless, be recorded within twelve months from the passage of this act, upon the usual proof [*of*] their execution; and when so recorded, the same or copies thereof, may be read in evidence without further proof.—[*Extended without limit as to time.—See 48.*]

Deeds not yet  
recorded, may  
be recorded.

SEC. III. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to amend an act entitled “an act to enable *Feme-Coverts* to convey their estates, and for confirming and making valid all conveyances and acknowledgments heretofore made by *Feme-Coverts*,” passed the 24th of April, 1760, so far as the same relates to *Feme-Coverts* conveying their dower.—*Approved* ——— 23, 1826.

*Whereas*, the before-recited act, in order to enable the husband to convey the entire interest which he has in lands and tenements, requires that the wife by her own free consent, become a party in the deed of conveyance, with her husband, and make, sign, seal and deliver, a formal relinquishment of her interest [*of*] dower, in and to the premises therein described; for remedy whereof—

30. *Be it enacted*, That from and immediately after the passing of this act, all conveyances of lands and tenements made by the husband alone, during the coverture, shall be legal and valid, and effectually convey the entire premises therein described; except such lands as the husband may have become possessed of by his inter-marriage with said *feme-covert*. Any law, usage, custom, or rule of court, to the contrary notwithstanding: *Provided*, that nothing herein contained shall prevent the widow from her right to dower in all lands of which her husband may have died seized and possessed.—[*And see next Act.*]

Lands con-  
veyed by  
husband. wid-  
ow not enti-  
tled to  
Dower, except  
lands pos-  
sessed by  
wife.

Dower in cer-  
tain Lands.

SEC. III. So much of the above-recited act as militates against this, is hereby repealed.

AN ACT to alter and explain the first section of an act passed in the year eighteen hundred and twenty-six, entitled “an act to amend an act to enable



*Feme-Coverts* to convey their estates, and for confirming and making valid all conveyances and acknowledgments, heretofore made by *Feme-Coverts*," passed the twenty-fourth of April, seventeen hundred and sixty, so far as relates to *Feme-Coverts* conveying their dowers.—*Approved Dec. 28, 1842.*

Sheriffs' sales,  
etc., bar of  
Dower.

31. *Be it enacted*, That all conveyances of real estate, made by any sheriff or other officer, in pursuance of sale made under execution or other legal process, or order of court, in the life-time of the husband, shall be as good and effectual, in bar of the right of dower, as if the conveyance were made by the husband himself.

AN ACT to provide for the recording of Deeds of Mortgage upon real and personal property within this State, and to define the lien of the same. And also, to amend an act entitled "an act to admit certain Deeds to record, and to authorize the same or copies thereof, to be read in evidence; and also, the copies of certain other Deeds." And for other purposes.—*Approved Dec. 26, 1827.*

*Whereas*, it is doubted if there be any law of force in this State, requiring deeds of mortgage to be recorded. *And whereas*, such a law is highly necessary for the prevention of frauds and oppression; for remedy whereof—

Existing  
Mortgages to  
be recorded in  
twelve m'nths.

On personal  
property, how  
proven and  
where  
recorded.

Record of  
Mortgages al-  
ready made,  
legalized.  
Proof of hand-  
writing of  
dead or re-  
moved wit-  
nesses.

Future  
Mortgages on  
real property  
how proven  
and recorded.

Future  
Mortgages of  
personal prop-  
erty, how  
proven and  
where re-  
corded.

How all fu-  
ture Deeds  
and Mortga-  
ges are to be  
admitted to  
record.

32. *Be it enacted*, That all deeds of mortgage upon real property which have been heretofore executed, shall after having been proved, as in case of deeds of real property, be recorded in the clerk's office of the superior court, of the county in which such real property may lie, within twelve months after the passing of this act. And that all deeds of mortgage upon personal property which have been heretofore executed, shall be proved by the affidavit of the subscribing witness and recorded in the clerk's office of the superior court, of the county in which the mortgager shall have resided at the time of making the same, or if he be dead, in the county where his legal representatives reside at the time of recording the same; or if there be no legal representatives in the county where the mortgager last resided, previous to his death, within twelve months after the passage of this act: *Provided*, that nothing herein contained shall be so construed as to require mortgages which have already been recorded to be again recorded, but the same shall be held and deemed to be legally recorded, and admitted in evidence under the laws now in force in this State. *And provided also*, that if the witnesses to any mortgage are dead, or removed from the county, then the same may be recorded upon the affidavit of one or more persons who are acquainted with the hand-writing.

33. SEC. II. All deeds of mortgage upon real property, hereafter to be made, shall be proved in the same way as is above required by the first section of this act, for the proving of mortgages of real estate, and shall be recorded in the clerk's office of the superior court, of the county in which such real estate shall lie, within three months from the date of such deed. And that all deeds of mortgage upon personal property, hereafter to be made, shall be proved in the same manner as is provided in the first section of this act, for the proving of like deeds heretofore made, and shall be recorded in the clerk's office of the superior court, of the county in which the mortgager resided at the time of the execution of the said mortgage, within three months after the date of such mortgage.

34. SEC. III. Every deed of conveyance or mortgage, of either real or personal property, hereafter to be made, may upon being executed in the presence of and attested by a notary public, judge of the superior court, justice of the inferior court or justice of the peace, (and in case of real property, by one other witness,) be admitted to record and made evidence in the different courts of law and equity in this State, as though the same had been executed, proved



and attested, as heretofore required by the laws of this State, in case of deeds of real property.

35. SEC. IV. Upon failure to record any mortgage, as herein-before required, within the time or times herein-before specified for recording the same, that then and in such case, all judgments obtained before the foreclosure of the said mortgage; and also, any mortgage executed after the same, and duly recorded, shall take lien on the said mortgaged property in preference to the said mortgage. Unrecorded Mortgages lose their lien.

36. SEC. V. *And whereas*, personal property is frequently mortgaged while beyond the limits of this State, which property so mortgaged, is afterward brought within the limits of this State, before the debt for which the same was pledged is satisfied: *Be it therefore enacted*, That in cases of mortgages of personal property, executed when the said property so mortgaged, is beyond the limits of this State, and which property shall be afterward brought within the limits of this State, such mortgages shall be recorded within six months after the said property shall be so brought in, in the office of the clerk of the superior court, of the county where the person so bringing the said property shall first establish his residence. Mortgages of property not in the State, may be recorded within six months after the property is brought into the State.

37. SEC. VI. If the holder of any mortgage, of property so brought into the State, shall fail to record his mortgage at the place and within the time specified in the preceding section for the recording the same, then and in such case, any and all judgments which shall have been duly obtained against the said mortgager, before the foreclosure of such mortgage, shall be entitled to take lien on the said mortgaged property, prior to the said mortgage: *Provided*, that if the said mortgagee, or his assignee, or the legal representatives of such mortgagee, or assignee, shall on foreclosure of the said mortgage, make affidavit before the judge or justice granting such foreclosure, that he was the holder of the said mortgage at the time of the removal of the said property into this State, and that he did not know, before the expiration of the time fixed, as aforesaid, for recording such mortgages, that the said mortgaged property had been removed within this State. Or if the said debt be not due, and the mortgagee or his legal representatives, or assignee, shall make a like affidavit, before a judge or justice, as aforesaid, and place the said mortgage and affidavit, together on record in the proper office herein-before specified, then and in such case, the said mortgage shall be considered and taken, from that time, to have and be entitled to the same lien as if the same had been duly recorded. Or their lien lost.

Unless oath be made of want of knowledge.

Debt not due, affidavit may be made and recorded.

38. SEC. VII. All deeds of land which may have been recorded on the oath of one or more of the subscribing witnesses; or if subscribed by two or more witnesses, one of whom attested the same as a judge of the superior court, justice of the inferior court, justice of the peace or notary-public, [*and*] shall have been recorded, in their official attestation; such deeds, though not recorded within the time prescribed by law, shall be admitted in evidence in the same manner as deeds which have been duly recorded, [*see* 46.] And when the originals of such deeds are lost or destroyed, and that fact is made known to the court, the copies of such deeds, taken from the record, and duly attested by the person having the custody of the same, may be read in evidence before any court of law or equity in this State. Deeds of Land recorded on the attestation of one (or more) subscribing witnesses, admitted as evidence.

39. SEC. VIII. That all deeds, other than mortgages, executed and proven, as stated in the preceding section, but not recorded, may be recorded within twelve months from the passage of this act.—[*See* 48.]



AN ACT to authorize the appointment of Commissioners out of this State, to take the Acknowledgments of Deeds, and other instruments of writing under seal; and to admit the same to record in this State. And also, to take Affidavits.—*Approved Dec. 22, 1829.*

Governor  
authorized to  
appoint Com-  
missioners in  
other States,  
for this;  
power of said  
Commission-  
ers.

40. The governor of this State, be and he is hereby authorized to name, appoint and commission, one or more commissioners in each, or such, of the other of the United States, or the Territories thereof, or the District of Columbia, as he may deem expedient; which commissioners shall continue in office during the pleasure of the governor, and shall have authority to take acknowledgments and proof of the execution of any deed, mortgage or other conveyance, of any lands, tenements, hereditaments or other property, lying and being in this State; and of any contract, letter of attorney or any other writing under seal, to be used or recorded in this State. And such acknowledgment or proof, taken or made in the manner directed by the laws of this State, and certified by any one of the said commissioners, before whom the same shall be taken or made, under his seal, (which certificate shall be endorsed on or annexed to the said deed or instrument aforesaid,) shall have the same force and effect, and be as good and available in law for all purposes, as if the same had been made before a judge or justice of the peace in this State.

Commissioner  
authorized to  
administer  
oath, etc.

41. SEC. II. Every commissioner appointed by virtue of this act, shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him, and such affidavit or affirmation made before such commissioner, shall and is hereby declared to be as good and effectual, to all intents and purposes, as if taken by any magistrate resident in this State and competent to take the same.

Commissioner  
must take an  
oath, which  
must be filed  
in the Secre-  
tary of State's  
office.

42. SEC. III. Every commissioner appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this act, shall take and subscribe an oath or affirmation, before a judge of one of the superior courts of the State in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of Georgia; which oath or affirmation shall be filed in the office of the secretary of state of this State.

SEC. IV. All laws or parts of laws militating against this act, are hereby repealed.

### *Commissioner's Oath.*

STATE OF VIRGINIA, } Personally appeared before the undersigned,  
Henry County. } Judge of the Superior Courts in said State and  
County, *John Tyler*, (a citizen of the State and County aforesaid, ap-  
pointed by the Governor of the State of Georgia, Commissioner for the  
said State of Georgia, in the State of Virginia, for the purpose of doing  
and discharging the duties of Commissioner of Georgia in said State of  
Virginia, according to the laws of the State of Georgia,) who being  
sworn, according to law, saith, that he will, well and faithfully, execute  
and perform, all the duties of such Commissioner, under and by virtue  
of the laws of the State of Georgia, according to the best of his skill  
and ability.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }  
*Henry Jones, J. S. C.* [L. S.] }

JOHN TYLER.

*Commissioner's Certificate.*

STATE OF VIRGINIA, } The undersigned, Commissioner of the State of  
 Henry County. } Georgia, hereby certifies that [*here state the Act*  
*which called forth the Certificate.*]

*Given under my hand and seal, this May 2, 1859.*

[L. S.]

JOHN TYLER, *Com'r of Georgia.*

AN ACT to make valid certain Deeds, &c.—*Approved, Dec. 23, 1833.*

43. SEC. II. All sales made by the commissioners of the several county academies in this State, shall be held, deemed, declared and considered valid, and that all deed or deeds made and executed by a majority of said commissioners, conveying a title to any tract or tracts, parcel or parcels of land, by them sold to a *bonâ fide* purchaser; which said commissioners, or their agents, may have heretofore purchased at the sales of confiscated property, shall be held, deemed, declared and considered valid, to all intents and purposes. And that the same shall be read in evidence in any court of law and equity in this State. Any law, usage or custom, to the contrary notwithstanding.

Sales and  
Deeds by  
Academy  
Commission-  
ers, made  
valid.

AN ACT to revive and continue in force an "act to admit certain Deeds to record; and to authorize the same, or copies thereof, to be read in evidence; and also, the copies of certain other Deeds," assented to the 23d of December, 1826.—*Approved Dec. 20, 1834.*

44. From and after the passing of this act, the act above-recited, be and the same is hereby revived.

45. SEC. II. All deeds executed in the manner pointed out by the foregoing recited act, (between the limitation of the same and the passage of this act,) shall be on the same footing as those therein recited. And that the aforesaid act, so revived, shall be and remain in full force and virtue for twelve months from the passage of this act.

Deeds not re-  
corded may  
be recorded  
within a speci-  
fied time.

AN ACT to admit certain Deeds to be recorded and read in evidence; and also, to prescribe the effect of certain other Deeds.—*Approved Dec. 25, 1837.*

46. SEC. I. *Be it enacted,* That from and after the passing of this act, all deeds for lands which may have been recorded upon the usual proof of execution, but not recorded within the time prescribed by the laws of this State, shall be admitted in evidence, without further proof. And when the originals are lost or destroyed, [and that being made judicially known to the court, copies of the same may be introduced and read in evidence, on any trial, before any court of law or equity in this State.

Deeds record-  
ed but not in  
time, made  
evidence.

Certified  
copies may be  
used, where  
originals lost.

47. SEC. II. All deeds executed according to the laws of this State, but not yet recorded, may nevertheless, be recorded within twelve months from the passage of this act, upon the usual proof of their execution; and when so recorded, the same, or copies thereof, (when the originals are shown to be lost or destroyed,) may be read in evidence without further proof.

Time for  
recording ex-  
tended one  
year.

48. SEC. III. All deeds conveying lands, hereafter executed, upon being attested or proved, in the manner required by the laws of this State, shall be admitted to record at any time, and after being recorded, shall be received in evidence, in any court of law or equity, without further proof of the execution thereof.

Deeds may be  
recorded at  
any time.



If two or more Deeds, which shall be preferred.

49. SEC. IV. In all cases where two or more deeds shall hereafter be executed by the same person or persons, conveying the same premises to different persons, the one recorded within twelve months from the time of execution, (if the feoffee have no notice of a prior deed, unrecorded at the time of the execution of the deed to him or her,) shall have preference; and if all be recorded, or not recorded within said time, the eldest deed shall have the preference.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to prescribe the mode of making Gifts of Slaves.—*Approved Dec. 29, 1838.*

Gift of Slaves, how must be made.

50. SEC. I. *Be it enacted*, That no gift of any slave or slaves, hereafter to be made, shall be good or available in law or in equity, against the creditors of the donor, or subsequent purchasers from him, (without actual notice,) unless the same be made in writing, signed and sealed by the donor, attested by, at least, one subscribing witness; and shall be proved or acknowledged, and be recorded within twelve calendar months from the execution thereof.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to admit certain Deeds, Mortgages, and Bills of Sale, to be proven and recorded; and to admit them, or their copies, in evidence in the Courts of law and equity in this State.—*Approved Dec. 31, 1838.*

When witness to certain instruments is dead, instrument may be recorded upon proof of the hand-writing of witnesses and maker.

51. SEC. I. *Be it enacted*, That from and after the passing of this act, that whenever any person, or body politic or corporate, may hold any deed, mortgage or bill of sale, purporting to have been signed in the presence of a witness or witnesses, according to the requisitions of law; and the said subscribing witness or witnesses shall have departed this life, [see 58,] before the said deed, bill of sale, or mortgage, shall have been proven; that then and in that case, it shall and may be lawful for the holder of said deed, mortgage or bill of sale, to prove the same by proving the hand-writing of the witnesses who may have attested the same, and the hand-writing of the maker of said deed, mortgage or bill of sale, by affidavit in writing, to be attached thereto; which said affidavit shall be taken before a judge of the superior courts, or justice of the inferior courts of this State; and the same so proven and recorded, shall be admitted in evidence in any courts of law or equity in this State, under the same rules of law by which they would have been subject if recorded in due time of law.—[See 69.]

SEC. II. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to continue in force the second section of an act passed on the 25th December, 1837, entitled "an act to admit certain Deeds to be recorded and read in evidence. And also, to prescribe the effect of certain other Deeds." Also, to authorize certain Bills of Sale to be recorded and read in evidence.—*Approved Dec. 21, 1839.*

Time for recording Deeds made indefinite.

52. SEC. I. *Be it enacted*, That the said second section of said act, be and the same is hereby continued of force without limitation as to the time of recording the deeds therein mentioned, which were not recorded before the passage of said act.

Bills of sale may be recorded, etc.

53. SEC. II. All bills of sale of personal property, heretofore executed but not recorded, may be recorded at any time after the passage of this act, and may be read in evidence without further proof.



54. SEC. III. From and after the passage of this act, all deeds that have been lost or mislaid and which have been recorded, but the time when they were recorded not appearing on the record, the same shall be read in evidence, without regard to the said omission.

Date of record not known, shall be admitted in evidence.

AN ACT to provide for the Acknowledgment and Execution of Deeds of Conveyance and other instruments of writing in Foreign Countries, touching property in this State.—*Approved Dec. 23, 1839.*

55. SEC. I. *Be it enacted*, That from and after the passage of this act, the consuls and vice-consuls of the United States, duly appointed and recognized, shall be authorized and empowered, as they hereby fully are, to receive the acknowledgment in writing of citizens of the United States, or other persons being or residing in the districts of their several consulates, of deeds of conveyance, mortgage, letter of attorney or other legal instruments whatever, touching or affecting real estate or other property, rights or interests whatever; situated, lying or being in any part of this State, belonging to the said parties, in whole or in part, in their own right or as the agents of others. And that the certificates of the said consuls and vice-consuls, under their official seals, shall be good and available, as evidence of the execution of such deeds of conveyance or other legal instruments, which shall be altogether valid and sufficient for the purpose therein mentioned.

Acknowledgments of Deeds and other instruments in Foreign countries before Consuls and Vice-Consuls, made evidence in this State.

56. SEC. II. The said consuls and vice-consuls shall be authorized and empowered, as they hereby fully are, to witness and take the acknowledgments of any citizen or citizens of the United States, or other persons within their consular's district, as aforesaid, of any lawful contract or engagement, to be executed or have effect in this State, (of whatever nature or kind,) which they may enter into or form, in the said district.

Consul and Vice-Consul may be witnesses as to contracts.

57. SEC. III. The consuls and vice-consuls shall be and are hereby fully authorized and empowered, in like manner, to witness any other lawful act, in the several districts, as aforesaid, on the part or behalf of citizens of the United States or others, as aforesaid, which may be interesting or useful to them, in reference to concerns in this State, of whatsoever descriptions. And that the certificates of the said consuls and vice-consuls, under their official seals, as aforesaid, shall be good and available as evidence of such contracts, engagements and acts; [and] shall be accordingly, valid and sufficient, to all intents and purposes, in this State.

Consul and Vice-Consul's Certificate, of any other act, good and sufficient.

AN ACT to authorize certain Instruments therein mentioned, to be recorded and read as evidence.—*Approved Dec. 10, 1841.*

58. SEC. I. *Be it enacted*, That all deeds, bills of sale and other conveyances, heretofore or hereafter executed, when the witnesses, or witness, to the same, are or is dead, become insane, or removed from the State, before the same are proved and recorded, may be recorded and read in evidence without further proof, upon affidavit in writing being made by some disinterested person or persons, before any judicial officer of this State, and attached to such instrument, proving the hand-writing of the person making such instrument, and of each of the witnesses thereof.

Witness dead, insane or removed, instrument may be recorded on proof of the hand-writing of maker and witnesses.

AN ACT to legalize and make valid certain acts of Clerks of the Superior Courts of this State. And to regulate the admission of Evidence in the several courts of Law and Equity in this State, so far as relates to certain papers. And to legalize the acts of A. V. Calvin, deputy sheriff of Camden County.—*Approved Dec. 10, 1841.*

59. SEC. I. *Be it enacted*, That from and after the passage of this act, all deeds of conveyance to lands, which have been attested by any clerk of

Deeds attested by Clerks, and



recorded,  
made valid,  
and allowed  
in evidence.

the superior or inferior courts of this State, and which have been recorded within the time prescribed by law, the same shall be admitted as evidence, in any of the courts of law and equity in this State, and as such be submitted to the jury. Any law, custom or usage, to the contrary notwithstanding.—  
[See 66.]

Such deeds  
may be re-  
corded.

60. SEC. II. All deeds of like character, which have not been recorded within the time prescribed by law, the same may be yet admitted to record, and be admitted in evidence in any of the courts of law or equity, in this State.

SEC. IV. [Repealing section.]

AN ACT to provide for the introduction in evidence of certain Copy-Executions, in certain cases therein defined.—*Approved Dec 20, 1845.*

Purchaser at  
Sheriffs' sale  
may have exe-  
cution re-  
corded, Copy evi-  
dence.

61. SEC. I. *Be it enacted*, That the purchaser of real estate, at any sheriffs' sale, either prior or posterior to the passage of this act, under execution, shall and may have the execution under which said real estate has or may be sold, together with all the entries thereon, recorded in the office of the clerk of the superior court of the county in which said real estate may be situated. And said record of said execution may be read as competent evidence in any cause where the title of said real estate is involved, upon satisfactory evidence of the loss or destruction of the original execution. And the clerk shall have the same fees for recording such executions, as he is now entitled to for recording sheriffs' deeds.

AN ACT for the admission of certain Evidence, in cases therein mentioned.—*Approved Dec. 27, 1845.*

Deeds and  
Bills of Sale  
improperly re-  
corded and  
originals lost,  
copies made  
evidence.

62. SEC. I. *Be it enacted*, That wherever deeds or bills of sale, properly executed, have been heretofore recorded, in any of the offices of the clerks of the superior courts of this State, prior to any act authorizing such record, (and the original of such deed or bill of sale has been lost or destroyed,) a copy thereof, duly certified by the clerk of said court, shall be admitted in evidence, in lieu of the original, in any court of law or equity in this State. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to require Marriage Settlements to be recorded.—*Approved Dec. 30. 1847.*

Marriage Set-  
tlements al-  
ready made,  
must be re-  
corded in 12  
months.  
Settlements  
hereafter  
made, record-  
ed within 3  
months.

63. SEC. I. *Be it enacted*, That all marriage agreements or settlements heretofore executed, either within this or any other State, or Territory, where the husband resides within the limits of this State, shall be recorded within twelve months after the passage and publication of this act, in the clerk's office of the superior court, in the county of the residence of the husband.

64. SEC. II. All marriage agreements or settlements hereafter made, either in this State or any other State or Territory, where the husband resides in this State, shall be recorded within three months from the execution thereof, in the clerk's office of the superior court, of the county of the husband's residence.

Without  
record or no-  
tice, in valid  
as to purcha-  
ser, creditor  
and security.

65. SEC. III. If any such instrument be not recorded within the time prescribed by this act, the same shall not be of any force or effect against a *bonâ fide* purchaser, without notice; or *bonâ fide* creditor, without notice; or *bonâ fide* security, without notice; who may purchase, or give credit, or become security, before the actual recording of the same.

AN ACT to authorize the Clerks of the Superior Courts to administer oaths in certain cases. And to admit to record all Deeds, Conveyances,



and other papers official, signed for that purpose by the Clerks of the Superior Courts.—*Approved Feb. 14, 1850.*

66. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for the clerks of the superior courts to administer to any witness or witnesses to a deed, conveyance or other paper intrusted for record, the usual oath or affidavit, heretofore administered by a judicial officer or notary-public, in making probate of the same, to admit said papers to record.—[*See 70.*]

Deeds may be proven before the Clerk.

67. SEC. II. The clerks of the superior courts are hereby authorized to sign, officially, all papers intrusted for record, which shall be recorded upon such signature as though signed by a judicial officer. [*See 70.*]

Official signature authorizes record.

AN ACT to extend the provisions of an act passed on the 31st day of December, 1838, entitled “an act to admit Deeds, Mortgages and Bills of Sale, to be proven and recorded; and to admit them or their copies in evidence in the Courts of law and Equity in this State.” And to authorize the proof, recording and reading in evidence of certain other Instruments.—*Approved Jan. 16, 1850.*

68. *Be it enacted*, That the proviso contained in the first section of said act, be and the same is hereby repealed, and that said act, (other than said proviso,) be and the same is hereby extended to all cases in which deeds, mortgages and bills of sale, have been heretofore, or may be hereafter executed, proved or recorded, as is authorized by said act.

Act of 1838, extended, and Proviso repealed.

69. *And be it further enacted*, That when a deed of conveyance, or bill of sale, has been or may be executed in another State, the same may be proved by the affidavit of a subscribing witness, as in other cases, before a judicial officer of this State, and shall be recorded and read in evidence without further proof.

Execution of Deeds made in other States, how proven.

AN ACT to authorize certain Deeds to be read in evidence, and to make legal the Registry of the same.—*Approved Jan. 16, 1850.*

70. SEC. I. *Be it therefore enacted*, That from and after the passage of this act, any deed, bill of sale, or any other conveyance of real or personal property, heretofore or hereafter made, [*and*] executed according to the laws of this State; and the execution thereof has been, or hereafter may be proved upon the oath of one of the subscribing witnesses, before the clerk of the superior court of any county in this State, or by him and another witness, attested (heretofore, or hereafter recorded,) may be read in evidence in any court of this State, without further proof of execution. And that such recording of the same, shall be legal, to all intents and purposes.—[*See 66.*]

Deeds proven before Clerk Superior Court, or attested by said Clerk as a witness and recorded, made evidence.

AN ACT to regulate the admission of Deeds, in evidence, in certain cases therein mentioned.—*Approved Jan. 17, 1850.*

71. SEC. I. *Be it enacted*, That any deed or conveyance, heretofore made, of lands in this State, or which shall hereafter be made, purporting to be duly proven, and which has been or may hereafter be recorded, within twelve months from its date, or within the time prescribed by law, without having the probate recorded, may, at any time, hereafter, be again recorded, with such probate, in the county where the land conveyed may lie; or in the county where the deed may have been or may hereafter be, first recorded; and when so again recorded with the probate, shall be admitted in evidence, and have the same lien and validity, without further proof, as if the probate had been recorded with the first record of said deed.

Where the Probate has not been recorded, both Deed and Probate may be recorded.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to authorize Notary-Publics to administer Oaths, &c.—*Approved Feb. 11, 1850.*

Probate before Notary-Public, valid.

72. SEC. I. *Be it enacted*, That notary-publics are hereby declared competent to administer oaths, as justices of the peace may do, in relation to the probate of deeds and other instruments, and to receive the same compensation therefor.

Perjury or False Swearing may be assigned.

73. SEC. II. Perjury, or false-swearing, may be assigned on oaths made before notary-publics, as may now be done on oaths administered by judicial officers, to affidavits.

SEC. III. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to admit to Record certain instruments, and to authorize Oaths to be administered, in certain cases, by persons herein named.—*Approved Feb. 18, 1854.*

Who may attest the execution of Deeds, etc, officially.

74. SEC. I. *Be it enacted*, That any instrument which would be admissible to record if executed or acknowledged before two witnesses, one of whom is a justice of the peace, shall be admitted to record, and have all the legal incidents of a recorded instrument, if executed or acknowledged before two witnesses, one of whom is the ordinary, or clerk of the inferior court, sheriff, deputy-sheriff, tax-receiver, tax-collector, or county-surveyor, of the county in which the instrument is executed or acknowledged; or mayor, or intendant, or commissioner, of any incorporated town or city.

Commissioners, petitioners of land, etc. may administer oaths to each other.

75. SEC. II. That all persons appointed under the laws of this State, as commissioners or processions of land, or appointed appraisers of the estates of deceased persons, or to distribute any estate, of [or] partitioners of lands, or commissioners of the assignment of dower, or commissioners of roads, or appraisers of damages for injuries done by rail-roads, or the cars or engines thereof, arbitrators and all other persons, of whom two or more are appointed by law to do any particular act, and [are] required to take [an] oath for its proper performance, may and they are hereby authorized, to take and subscribe the oath necessary to be taken in such cases, before each other, and they shall be subject to the same pains and penalties as though said oath had been taken before any person now authorized by law, to administer oaths in such cases.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to declare the law of Evidence in certain cases, and to prescribe rules under which Clerks may refuse to record Deeds, and for other purposes.—*Approved Dec. 22, 1857.*

Parol evid'nce of real Grantee, may be made in all suits.

76. SEC. I. *Be it enacted*, That in any suit respecting title to land, in any court of law or equity in this State, it is declared to be competent, by parol proof, on the trial, to ascertain the true grantee of the land, and show what person really drew it, notwithstanding any mistake in the issuing of the grant, or in taking down, or transcribing the name of the drawer:

Legally vest'd rights protected.

*Provided*, nothing herein contained shall be so construed as to apply to, or be applicable to the legally vested rights of any citizen of this State or of the United States, in rights vested by written agreement of all kinds whatsoever, bearing date anterior to the passage of this act.

Clerk may refuse to record fraudulent Deeds.

77. SEC. II. That where any deed shall be presented to any clerk in this State, to be recorded, if it shall appear to be a deed under what is known as the Primrose Grant, or any such grant, or for any other reason, fraudulent and void, it shall be the duty of the clerk to refuse to record such deed, and assign his reasons therefor, in writing, and return the deed

and his refusal to record the same, to the next term of the superior court, when the question whether the deed, or the grant under which the deed was made, is fraudulent and void, shall be tried by a special jury of the said county; if they find "fraud," the deed shall not be recorded, but if they find "no fraud," the deed shall then be recorded.

Issue to be  
tried by spe-  
cial jury.

SEC. III. [Repeals conflicting laws.]

AN ACT authorizing Witnesses residing out of this State, to prove the execution of Deeds and other Instruments-in-Writing, by making oath, in writing; under certain provisions herein named.—*Approved Dec. 11, 1858.*

78. SEC. I. That when any witness to any deed, or other instrument in writing, resides out of this State, it shall and may be lawful for such witness to go before any officer authorized by law, in such State where such witness may reside, and make oath in writing, of the execution of such deed, or other instrument in writing, as is provided to be done in this State. And the certificate of any clerk, of any court having a seal of office, that the person attesting said affidavit, is authorized, by law of such State, to administer oaths; (and the additional certificate of the judge of such court, that the said clerk is really the clerk of the same,) shall be sufficient to authorize such deed, or other instrument in writing to be admitted to record. And the same when so admitted to record, shall be admitted and received in evidence as other deeds and instruments in writing; duly recorded, according to the laws now of force in this State.

Non-resident  
witness to  
Deed, etc. how  
sworn to the  
same.

Judge and  
Clerks Certifi-  
cate.

Deed, etc.  
made evid'ce.

SEC. II. [Repeals conflicting laws.]

*Power of Attorney made in another, to be enforced in this State.*

STATE OF SOUTH CAROLINA, } Know all men by these presents, that I,  
Chesterfield District. } *Lawrence Earl*, of the State and District  
aforesaid, for divers good causes and considerations me hereunto moving, have made, ordained and appointed, and by these presents do make, ordain and appoint *Ransom Peterson*, of said State and District, my true and lawful attorney. For me and in my name and for my own proper use and benefit, to proceed to the State of Georgia, and to [here state the object of the Power of Attorney—if it be to collect debts; to convey lands or other estates; to receive a legacy or distributive share of an estate; or to transfer stocks, etc.—state the same fully and at large, plainly and distinctly.] And to have, use and take all lawful ways and means, in my name or otherwise, that may be found necessary or proper in the execution of this Power of Attorney. To execute all such deeds and other instruments, in my name and for me, as may be necessary and proper, for the purposes aforesaid; and to do all other lawful acts and things whatsoever, concerning the premises, as fully, in every respect, as I myself, might or could, were I personally present at the doing thereof. [And one or more Attorneys under him, for the purposes aforesaid, to make, and again at his pleasure, to revoke.] Ratifying and confirming, and by these presents allowing, whatsoever my said Attorney shall, in my name, lawfully do or cause to be done, in and about the premises, by virtue of this Power of Attorney.



In witness whereof I have hereunto set my hand and affixed my seal,  
this *May* 1, 1859. LAWRENCE EARL. [L. S.]

Signed, sealed and delivered, in presence of }  
*John Stone, and*  
*James Jones, J. P.* }

### *Affidavit of Witness.*

STATE OF SOUTH CAROLINA, } Before me, *David S. Harlee*, Mayor of  
*Chesterfield District.* } the City of *Cheraw*, in the State and Dis-  
 trict aforesaid, personally came *James Jones*, a *Justice of the Peace*, in and  
 for said District, who being duly sworn, deposeth and saith, that *Law-*  
*rence Earl*, signed, sealed and delivered the foregoing Power of Attor-  
 ney to the said *Ransom Peterson*, for the purposes therein mentioned,  
 in the presence of deponent and *John Stone*, who subscribed the same  
 as witnesses.

Sworn to and subscribed,  
 before me, this *May* 2, 1859. }  
*David S. Harlee, Mayor of Cheraw.* }

JAMES JONES.

### *Certificate of the Mayor.*

STATE OF SOUTH CAROLINA, } I, *David S. Harlee*, Mayor of the City of  
*Chesterfield District.* } *Cheraw*, in the State and District aforesaid,  
 do hereby certify, that the above named *James Jones*, (a *Justice of the*  
*Peace*,) this day appeared, in person, before me, and made and sub-  
 scribed, in due form of law, the foregoing affidavit. In testimony where-  
 of I have hereunto subscribed my official signature and affixed the seal  
 of said City, this *May* 2, 1859.

[L. S.]

DAVID S. HARLEE,  
*Mayor of the City of Cheraw.*

NOTE.—In the foregoing form, South Carolina, Chesterfield District, is selected as the place where the Power of Attorney purports to have been executed; in the absence of the Governor, the Chief Justice, and of the Judges of the Courts of Common Pleas, of that State, (before either of whom, according to the statute, the execution of the Power of Attorney might have been proven,) resort has been had, for that purpose, to the Mayor of the City of Cheraw; a Mayor being designated in the statute, as one of the officers before whom the execution may be proved. A Power of Attorney, or other Deed, executed out of this State, to be enforced within it, so proven and certified by the Mayor, under the public seal of the City, is admissible in evidence, in the Courts of Georgia, without other proof. The same Form is to be observed should the execution of the Deed be proven before any of the other officers named in the statute.

Whenever a Deed or Power of Attorney is executed out of this State, to be used in evidence in our Courts, it should be executed and proven in the manner prescribed by this act, or before the Commissioner of the State, appointed by the Governor of Georgia, for the purpose of attesting the authentication of Deeds, etc.—*And see 77.*

The form of execution and proof of Deeds, etc., executed in this State and to be used in some other State, depends upon the statutory regulations of the State in which such Deeds, etc., are to be used.

When a sale of the property is made, (if Land, or any freehold interest,) the Power of Attorney should be recorded in the County where the Land lies.

A *scrawl* will not answer; in the foregoing form of Power, there must be a *seal*.

### *Power of Attorney from one to another citizen of this State, to be used in this State.*

STATE OF GEORGIA, } Know all men by these presents, that I, *John*  
*Houston County.* } *Doe*, of the said State and County, for divers good  
 causes and considerations me hereunto moving, have made, ordained

and appointed, and by these presents, do make, ordain and appoint *Richard Roe*, of said State and County, my true and lawful Attorney; for me and in my name and for my own proper use and benefit, to [*here state fully and particularly, the object for which the Power of Attorney was made.*] And to have, use and take, all lawful ways and means, in my name, or otherwise, that may be found necessary or proper, in the execution of this Power of Attorney. To do all lawful acts and things whatsoever, concerning the premises; as fully in every respect, as I myself, might or could do were I personally present at the doing thereof. [*And one or more Attorneys under him, for the purposes aforesaid, to make, and again at his pleasure, to revoke.*] Ratifying and confirming, and, by these presents, allowing whatsoever my said Attorney shall, in my name, lawfully do or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof I have hereunto set my hand and affixed my seal, this *May 1*, 1859.

Signed, sealed and delivered, }  
in presence of  
*James C. Webb,*  
*James Mack, J. P.*

JOHN DOE. [L. S.]

NOTE.—When a Deed of Conveyance is executed under a Power of Attorney, the Attorney must sign thus

JOHN DOE,  
*By his Att'y in Fact,* } [L. S.]  
RICHARD ROE.

Or thus:

RICHARD ROE,  
*Att'y in Fact for* } [L. S.]  
JOHN DOE.

Where the Power of Attorney is made and to be used in this State, a *scrawl* at the end of the Constituent's name will be sufficient.

If there be property mentioned in the Power of Attorney, other than that conveyed, whereby it becomes necessary for the Attorney to retain the Power, the Power of Attorney should be recorded in the County where the property is situate, that is conveyed by it. If the Power of Attorney be to convey Land, the Land must be as particularly described in the Power of Attorney, as is required in the Deed of Conveyance.

### *Power of Attorney executed before a Notary-Public.*

STATE OF GEORGIA, } Be it remembered, before the undersigned, a  
*Houston County.* } Notary-Public in and for said County, and State,  
duly commissioned and sworn, this day, came *John Doe*, who acknowledged the above to be his act and deed.

*Given under my hand and Notarial Seal, this May 1*, 1859.

[L. S.]

JAMES A. PRINGLE, *Not. Pub.*

### *Warranty Deed.*

STATE OF GEORGIA, } This Indenture, made this *first* day of *May*, in  
*Houston County.* } the year eighteen hundred and *fifty-nine*, between  
*Charles Smith* of the State and County aforesaid, of the one part, and  
*Richard Roe* of the same place, of the other part, witnesseth, that the  
said *Charles Smith*, for and in consideration of the sum of *one thousand*  
dollars to him in hand paid, (at and before the sealing and delivery of  
these presents,) the receipt whereof is hereby acknowledged, hath  
granted, bargained, sold and conveyed, and doth, by these presents,  
grant, bargain, sell and convey, unto the said *Richard Roe*, his heirs  
and assigns, all that tract or parcel of land, situate, lying and being in



the County aforesaid, [*if the Lands to be conveyed belonged to another County originally, so state it in this part of the Deed,*] on *Big Inditan Creek*, in the *tenth* district of said County, being lot number *forty-nine*, (originally granted to *John Doe*,) containg *two hundred two and one-half acres*, more or less.

To have and to hold said tract or parcel of Land to him the said *Richard Roe*, his heirs and assigns, together with all and singular, the rights, members and appurtenances thereof, to the same in any manner belonging; to his and their own proper use, benefit and behoof, forever in fee-simple.

And the said *Charles Smith*, for himself, his heirs, executors and administrators, the said bargained premises, to the said *Richard Roe*, his heirs and assigns, will warrant, and forever defend the right and title thereof, against themselves, and against the claim of all other persons whomsoever.

In witness whereof, the said *Charles Smith* hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, }  
in presence of  
*John Bryan.*  
*James Mack, J. P.* }

CHARLES SMITH. [L. S.]

NOTE.—It is necessary barely to describe the property conveyed, plainly and substantially; whether it be Lands, Houses and Lots, or any other real property. It is best, in most cases, when the premises can be accurately described without it, to omit a description by metes and bounds.

Two witnesses are sufficient to a Deed, and if one of them be a Judge of the Superior Court, Justice of the Inferior Court, Justice of the Peace, Notary-Public, etc., the Deed will be admitted to record without any other or further proof of its execution; but if neither of the witnesses should be one of the officers named, (and a multitude of others, specified by the act of 1854 and other acts,) the following is the form of the Probate which must be written on the back of the deed.

### *Probate of Witness.*

STATE OF GEORGIA, } Personally, came before the undersigned, one  
*Houston County.* } of the Justices of the Peace in and for said County,  
*John Bryan*, who being duly sworn, deposeth and saith, that he saw *Charles Smith* sign, seal and deliver the within Deed, for the purposes therein mentioned. That deponent subscribed the same as a witness, in the presence of said *Charles Smith*, and saw *James Mack* do so likewise.

Sworn to and subscribed, }  
before me, this *May 2*, 1859. }  
*John H. Ragin, J. I. C.* }

JOHN BRYAN.

### *Deed of Gift.*

STATE OF GEORGIA, } This Indenture, made this *first* day of *May*,  
*Houston County.* } eighteen hundred and *fifty-nine*, between *John Doe*, of said *State and County*, of the one part, and *James Doe*, grand-son of the said *John Doe*, of the same place, of the other part, witnesseth, that the said *John Doe*, for and in consideration of the sum of *five* dollars, cash in hand paid, the receipt whereof is hereby acknowledged, and for and in consideration of the natural love and affection which he has and bears to his said grand-son, hath given, granted and conveyed,

and doth, by these presents, give, grant and convey to the said *James Doe*, his heirs and assigns, all that tract or parcel of Land, situate, lying and being in the *tenth* district of the County aforesaid, (*agreeably to original survey, and granted to John Stone*,) known by the number *forty-nine*, containing *two hundred two and one-half acres* more or less.

To have and to hold said tract or parcel of Land to him, said *James Doe*, his heirs and assigns; together with all and singular, the rights, members and appurtenances to the same, in any manner belonging, to his and their own proper use, benefit and behoof, forever in fee-simple.

In testimony whereof, the said *John Doe* hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, }  
     in presence of  
     *John Bryan.*  
     *James Mack, J. P.* }

JOHN DOE. [L. S.]

NOTE.—With alterations which relate alone to the description of the property, the above form will answer as a conveyance of personal property. Or, personal property may be included in the Deed conveying Land.

### *Quit-Claim Deed.*

STATE OF GEORGIA, } This Indenture, made this *first* day of *May*,  
     *Houston County.* } eighteen hundred and *fifty-nine*, between *John Doe*, of said County and State, of the one part, and *Richard Roe*, of the same place, of the other part, witnesseth, that the said *John Doe*, for and in consideration of the sum of *five hundred* dollars, cash in hand paid, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents, doth remise, release and forever quit-claim to the said *Richard Roe*, his heirs and assigns, all the right, title, interest, claim or demand, the said *John Doe* has, or may have had, in and to lot of Land number *forty-nine*, in the *tenth* district of the County aforesaid, (*agreeably to original survey*,) containing *two hundred two and one-half acres*, more or less. With all the rights, members and appurtenances to said lot of Land, in anywise appertaining or belonging.

To have and to hold the said lot of Land to the said *Richard Roe*, his heirs and assigns, so that neither the said *John Doe*, nor his heirs, nor any other person or persons claiming under him, shall at any time hereafter, by any way or means, have, claim or demand, any right, title or interest, in or to the aforesaid lot of Land, or its appurtenances, or any part thereof.

In testimony whereof, the said *John Doe* hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, }  
     in presence of  
     *John Stone.*  
     *James Mack, J. P.* }

JOHN DOE. [L. S.]

### *Sheriff's Deed.*

STATE OF GEORGIA, } This Indenture, made this *first* day of *May*,  
     *Houston County.* } eighteen hundred and *fifty-nine*, between *John H. Halstead*, Sheriff of the County aforesaid, of the one part, and *John Doe*, of the same place, of the other part, witnesseth, that whereas,



said Sheriff did lately seize and levy upon a certain *lot of Land*, (notice of said levy having been given to the *tenant in possession*,) situate, lying and being, in the County aforesaid, known and distinguished as lot number *forty-nine*, in the *tenth* district, (agreeably to original survey,) containing *two hundred two and one-half* acres, as the property of *Richard Roe*, by virtue of a writ of *fieri facias*, issued from the *Superior Court* of said County, in favor of *Charles Smith* against said *Richard Roe*. And after publicly advertising said *lot of Land*, agreeably to law, said Sheriff did put up and expose the same to sale at public outcry, on the first Tuesday in *May instant*, at the door of the Court-House in *Perry*, in said County, within the legal hours of sale, when said *lot of Land* was knocked off to said *John Doe*, at and for the sum of *one thousand* dollars, he being the highest and best bidder.

Now, for and in consideration of the said sum of *one thousand* dollars, in hand paid to said Sheriff, by him, the said *John Doe*, (at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,) the said Sheriff hath granted, bargained and sold, and by these presents doth grant, bargain and sell, (so far as the office of Sheriff authorizes him,) unto him, the said *John Doe*, his heirs and assigns, all the right, title and interest of the said *Richard Roe*, in said *lot of Land*; (of which the said *Richard Roe* was seized and possessed, as aforesaid,) with all the rights, members and appurtenances thereunto belonging, or in any-wise appertaining, to his and their own proper use, benefit and behoof forever.

In witness whereof, the said *John H. Halstead*, Sheriff as aforesaid, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered,  
in presence of  
*John Stone.*  
*James Mack, J. P.*

JOHN H. HALSTEAD, *Sheriff*. [L. S.]

NOTE.—The Sheriff is directed, by statute, to put the purchaser of real property at his sales, in possession.

He is also required by the act of Dec. 22, 1808, when he shall “levy an execution on Land, to leave a written notice of the said levy with the owner, if in the County, (or tenant in possession, if any,) or transmit the same to him, her or them, in five days after such levy.”

### *Notice of Levy by Sheriff.*

STATE OF GEORGIA, } To *Richard Roe*, owner of lot of Land number  
*Houston County.* } *forty-nine*, in the *tenth* district of said County.

You are hereby notified, that I have, *this day*, levied a *fi. fa.* issued from the Superior Court, (*John Doe vs. Richard Roe*,) upon the aforesaid lot of Land, as your property. And you are further notified that said lot of Land will be sold on the first Tuesday in *July* next. This *May 1*, 1859.

JOHN H. HALSTEAD, *Sheriff*. [L. S.]

### *Executor's Deed.*

STATE OF GEORGIA, } Pursuant to the last Will and Testament of  
*Houston County.* } *John Doe*, late of said County, deceased, after public notice made in the *State Press* news-paper, published in the city

of *Macon*; on the first Tuesday in *May*, (being the *fourth* day of said month,) in the year eighteen hundred and *fifty-nine*, I, *Richard Roe*, duly constituted Executor of the last Will and Testament of said *John Doe*, deceased, did put up and expose to sale, to the highest bidder, at *Perry*, in said County, between the legal hours of sale, for ready money, lot of *Land* number *forty-nine*, in the *tenth* district of said County, (agreeably to original survey,) when *James Wall*, of said County, being the highest and best bidder, said lot of *Land* was knocked off to him, at and for the price of *one thousand* dollars.

Now, therefore, this Indenture, made and entered into this *fourth* day of *May*, eighteen hundred and *fifty-nine*, between said *Richard Roe*, Executor, as aforesaid, of the one part, and said *James Wall*, of the other part, witnesseth, that for and in consideration of the sum of *one thousand* dollars, cash in hand paid, (at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,) said *Richard Roe*, Executor, as aforesaid, hath granted, bargained, sold and conveyed, and by these presents, doth grant, bargain, sell and convey, (so far as the office of Executor authorizes him,) unto the said *James Wall*, his heirs and assigns, all that lot of *Land*, situate, lying and being in the *tenth* district of the County aforesaid, known and distinguished in the plan of said district, by the number *forty-nine*, containing *two hundred two and one-half* acres, more or less; with all the rights, members and appurtenances to said lot of *Land*, in any-wise appertaining or belonging.

To have and to hold said lot of *Land*, unto him, the said *James Wall*, his heirs and assigns, in the same manner in which it was possessed and held by the said *John Doe*, deceased.

In testimony whereof the said *Richard Roe*, Executor, as aforesaid, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered,  
in presence of  
*John Stone.*  
*James Mack, J. P.*

RICHARD ROE, [L. S.]  
*Ex'r of John Doe, dec.*

### *Administrator's Deed.*

STATE OF GEORGIA, } This Indenture, made this *first* day of *May*,  
*Houston* County. } eighteen hundred and *fifty-nine*, between *John Doe*, of the State and County aforesaid, duly constituted Administrator of the estate of *Richard Roe*, late of said County, deceased, of the one part, and *Charles Smith*, of the same place, of the other part, witnesseth, that whereas, by virtue of an order granted by the Ordinary, (previous notice of application having been given in the *State Press* news-paper, published in the city of *Macon*, according to law, in such case made and provided, on the *first* Monday in *March* last,) to said *John Doe*, Administrator as aforesaid, to sell a lot of *Land* belonging to the estate of said deceased, situate, lying and being in the County aforesaid, known and distinguished as lot number *forty-nine*, in the *tenth* district.

After the said lot of *Land* was duly advertised, in conformity to law, the same was put up and exposed to sale, to the highest and best bid-



der, at the door of the Court-House at *Perry*, in said County, within the legal hours of sale, on the *first Tuesday in April, last past*, by said *John Doe*, Administrator, as aforesaid, when said *lot of Land* was knocked off to said *Charles Smith*, at the price and sum of *one thousand* dollars.

Now, for and in consideration of the said sum of *one thousand* dollars, *cash in hand paid* to the said *John Doe*, Administrator, as aforesaid, by him, said *Charles Smith*, (at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,) said *John Doe*, Administrator as aforesaid, hath granted, bargained and sold, and by these presents, doth grant, bargain and sell, (so far as the office of Administrator authorizes him,) unto the said *Charles Smith*, his heirs and assigns, the said *lot of Land* number *forty-nine*, in the *tenth* district of said County, containing *two hundred two and one-half* acres, more or less, with all the rights, members and appurtenances thereto belonging, or in any wise appertaining; to him, said *Charles Smith*, his heirs and assigns, in as full and ample a manner as said *lot of Land* was seized, possessed and enjoyed by the said *Richard Roe*, deceased, in his life-time.

In witness whereof, said *John Doe*, Administrator, as aforesaid, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, }  
in presence of  
*John Stone,*  
*James Mack, J. P.*

JOHN DOE, [L. S.]  
*Adm'r of Richard Roe, dec.*

NOTE.—As Deeds made by Sheriffs, Executors, Administrators, etc., contain no warranty, and as such Deeds convey only such interest as the defendant, or deceased, may have had in the property conveyed, the doctrine of *caveat emptor* applies with peculiar force: for, there being no warranty, if the Deed fails, the purchaser, at such sales, has no redress.

### *Deed of Trust.*

STATE OF GEORGIA, } This Indenture, made and entered into this  
*Houston County.* } *first day of May*, eighteen hundred and *fifty-nine*,  
between *John Doe*, of said *State and County*, of the one part, and  
*Richard Roe*, of the same place, of the other part, witnesseth, that for and  
in consideration of the natural love and affection which he, the said  
*John Doe*, has and bears to his daughter, *Mary Thomas*, of said *State*  
*and County*, wife of *Robert Thomas*, and for and in consideration of the  
sum of *five* dollars, cash in hand paid by said *Richard Roe*, (at and be-  
fore the sealing and delivery of these presents, the receipt whereof is  
hereby acknowledged,) said *John Doe* hath bargained, sold, granted  
and conveyed, and by these presents, doth bargain, sell, grant,  
and convey unto the said *Richard Roe*, for the use, benefit and ad-  
vantage, in trust for said *Mary Thomas*, for life, (exempt from the  
marital rights of said *Robert Thomas*, or any future husband said *Mary*  
*Thomas* may have,) for her sole and separate use, and on her decease,  
to such child or children, or representative of child or children, as she  
may leave in life, to wit: all that *lot of Land*, number *forty-nine*, in the  
*tenth* district of said *County*, containing *two hundred, two and one-half* acres,  
*agreeably to original survey*; with all the rights, members and appurte-  
nances to said *lot of Land* belonging, or in anywise appertaining. And

also, a *Negro fellow named Jacob, about twenty-five years of age, of yellow complexion.*

To have and to hold the above described property to him, the said *Richard Roe*, in trust for said *Mary Thomas* and her children, as above specified, forever; free from the debts, liabilities, obligations and control of the present or any future husband of the said *Mary Thomas*.

In witness whereof the said *John Doe* hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered,  
in presence of  
*John Stone,*  
*James Mack, J. P.*

JOHN DOE. [L. S.]

NOTE.—It is not indispensably necessary that a Trustee be appointed in a Deed of the foregoing description; for if it becomes necessary that there should be a Trustee to protect the rights of the *cestui que trust*, on application, the Chancellor will appoint one.

### *Bill of Sale of Personals.*

STATE OF GEORGIA, } Know all men by these presents, that I, *Law-*  
*Houston County.* } *rence Earl, of the County and State aforesaid*, for and  
in consideration of the sum of *five hundred* dollars, to me in hand paid  
by *John Lovemoney, of the same place*, (the receipt whereof, I do hereby  
acknowledge,) have granted, bargained and sold, and by these pres-  
ents, do grant, bargain and sell, unto the said *John Lovemoney*, his  
heirs and assigns, the following property, to wit: *a certain negro fellow*  
*named Tom, about thirty years of age, of yellow complexion*; which *negro*  
*fellow*, I warrant to be sound and well, in body and in mind, and to be  
*a slave for life.*

To have and to hold the aforesaid bargained property, to him the  
said *John Lovemoney*, his heirs and assigns *forever*. And I, the said  
*Lawrence Earl*, for myself, my heirs, executors and administrators, all  
and singular, the said bargained property unto him the said *John*  
*Lovemoney*, his heirs and assigns, will and do, warrant and defend, by  
these presents.

In witness whereof, I have hereunto set my hand and affixed my  
seal, this *May 1, 1859.*

Signed, sealed and delivered,  
in presence of  
*John Stone,*  
*James Mack, J. P.*

LAWRENCE EARL. [L. S.]

NOTE.—One witness to a Bill of Sale is sufficient, but it is best to have two, as in a Deed. If the witness, or one of two witnesses, be a Justice of the Peace, etc., the Bill of Sale will be admitted to record, without other or further proof of its execution. If the witness be not such officer, a similar Probate to that of a Deed, must be made, before the Bill of Sale can be recorded.

AN ACT to authorize Bills of Sale to be proven, recorded and admitted in Evidence, in certain cases therein specified.—*Approved March 4, 1856.*

79. SEC. I. That where any deed or bill of sale, or other conveyance of slaves or other personal property, has heretofore been made and delivered, without having been attested by a subscribing witness, it may be lawful, by an affidavit in writing, by some disinterested witness, to prove the hand-writing of the maker, before any officer authorized to administer oaths; and when thus proven, the same may be recorded in the clerk's office of the superior

Bills of Sale,  
etc., how  
proven and  
recorded.



Execution of  
Instruments,  
denied under  
oath, how  
proven.

court of the county in which the maker resided at the time of making the same, if a resident of the State; and if not, then in the county of the residence of the vendor or donor, within six months after the passage of this act. And that all similar conveyances hereafter to be made, may be proven and recorded in the same manner, within twelve months after the date of such conveyance. And all instruments proven and recorded as above described, shall be admitted in evidence, without further proof, as other recorded conveyances, under existing laws, unless the maker of any such instrument, or his legal representative, denies the execution thereof under oath; and in that case, the person claiming under any such instrument, shall be required to prove its execution, in the manner now required by law, before the same shall be admitted as evidence.—[See 3\*.]

### *Sheriff's Bill of Sale.*

STATE OF GEORGIA, } Whereas, in obedience to a writ of *feri facias*  
Houston County. } issued from the *Superior Court* of said County, at the instance of *John Doe against Richard Roe*. I, *John H. Halstead*, Sheriff of said County, did lately seize and levy said writ upon a *certain negro fellow named Dick*, about thirty years of age, of yellow complexion, as the property of said *Richard Roe*; and said negro fellow having been duly and publicly advertised, according to law, (in the *State Press* news-paper, published in the city of *Macon*,) did, on the first Tuesday in *May*, in the year eighteen hundred and *fifty-nine*, at the Court-House door, in *Perry*, in said County, expose said *negro fellow* at public outcry, when *Robert Towns* being the highest and best bidder, said *negro fellow* was knocked off to him, at and for the price of *one thousand* dollars.

Now, know all men by these presents, that I, *John H. Halstead*, Sheriff of said County, for and in consideration of the sum of *one thousand* dollars, cash in hand paid by said *Robert Towns*, (at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,) do hereby bargain, sell and convey, (so far as the office of Sheriff authorizes me,) said *negro fellow Dick*, to him, the said *Robert Towns*, his heirs and assigns, all the estate, right, title, interest, property, claim or demand of the said *Richard Roe*, in law, equity or otherwise, whatsoever, of, in or to the said *negro fellow Dick*.

In witness whereof, the said *John H. Halstead*, Sheriff, hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered, }  
in presence of }  
*John Stone,* }  
*James Mack, J. P.* }

JOHN H. HALSTEAD, Sheriff. [L. S.]

NOTE.—The foregoing Form, with simple and suitable alterations, will answer for Constables.

### *Executor's Bill of Sale.*

STATE OF GEORGIA, } Know all men by these presents, that I, *John*  
Houston County. } *Doe*, Executor of the last Will and Testament of *Richard Roe*, deceased, late of said County, for and in consideration of the sum of *one thousand* dollars, cash in hand paid, by *Charles Smith*, of said County, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents, (according to the last Will

and Testament of said deceased,) do grant, bargain and sell, unto the said *Charles Smith*, his heirs and assigns, the following property, to wit: *a certain negro woman slave named Jane, about twenty years of age, of yellow complexion.*

To have and to hold the aforesaid bargained property to him the said *Charles Smith*, his heirs and assigns.

In witness whereof, I have hereunto set my hand and affixed my seal, this *May 1, 1859.*

Signed, sealed and delivered,  
in presence of  
*John Stone,*  
*James Mack, J. P.*

JOHN DOE, [L. S.]  
*Ex'r of Richard Roe, dec.*

NOTE.—An Executor is bound to carry out the dispositions of the Testator, as they are expressed in the Will; “the Will in the case, is the law of the case;” that is, the Will is the law by which the Executor must perform all his duties.

The act of 1854, declares that “Executors, Administrators, Guardians, Trustees, Sheriffs, Coroners and other public officers,” shall not be personally responsible, on any warranty they may make, unless they “shall distinctly express, in the Conveyance, an intention to be personally bound;” therefore, it is best, in every instance, for such persons to omit the clause of warranty altogether, in their Conveyances.

### *Administrator's Bill of Sale.*

STATE OF GEORGIA, { Know all men by these presents, that I, *John*  
*Houston County.* { *Doe*, Administrator of the Estate of *Richard Roe*, deceased, late of *said County*, did, after public notice made, according to law, apply on the first Monday in *May last*, to *John S. Jobson*, Ordinary of said County, for leave to sell a *Negro fellow slave, named Harry*, the property of said deceased, (the affairs of the estate of said deceased requiring that said *slave* should be sold.) And whereas, leave to sell said *slave* was granted by said Ordinary; and publication of said sale being duly made, the undersigned proceeded, (on the first Tuesday in *July instant*, at the Court-House door, in *Perry*, within the legal hours of sale,) to sell said *slave*, at public outcry, when said *slave* was knocked off to *John Smith*, at and for the sum of *one thousand* dollars. Therefore, by virtue of the authority in me vested, as Administrator as aforesaid, I do hereby grant, bargain and sell said *slave Harry*, to him, the said *John Smith*, his heirs and assigns, in consideration of the sum of *one thousand* dollars, *cash in hand paid.*

In witness whereof, I have hereunto set my hand and affixed my seal, this *July 5, 1859.*

Signed, sealed and delivered,  
in presence of  
*John Stone,*  
*James Mack, J. P.*

JOHN DOE, [L. S.]  
*Adm'r of Richard Roe, dec.*

NOTE.—A Deed or Bill of Sale is evidence, *prima facie*, of what it contains; therefore, where preliminary qualifications are required, in order that a sale of property may be lawfully made, the Deed or Bill of Sale should show that such preliminary steps had been taken.

### *Bond for Titles to Land.*

STATE OF GEORGIA, { Know all men by these presents, that I, *John*  
*Houston County.* { *Doe*, of the State and County aforesaid, am held and firmly bound unto *Richard Roe*, of the same place, his heirs and assigns,



in the sum of *two thousand* dollars, subject to the following condition—

The condition of the above obligation is as follows—whereas, said *Richard Roe* has, *this day*, made and delivered to the undersigned, his certain *Promissory Note*, for the sum of *one thousand* dollars, to become due on the *first day of January next*. Now, should the said *Richard Roe* well and truly pay the said *Promissory Note*, then the undersigned binds himself to make, or cause to be made, to said *Richard Roe*, good and sufficient Titles, *in fee-simple, to lot of Land number forty-nine, in the tenth district of said County*, (agreeably to original survey,) containing *two hundred two and one-half* acres, more or less, with all the rights, members and appurtenances to said *lot of Land*, in anywise appertaining or belonging; which, should the undersigned do and perform, then the above obligation to be void; otherwise, to remain of force. This *May 1, 1859*.

Before me—  
*James Mack, J. P.*

JOHN DOE. [L. S.]

NOTE.—A Bond does not require a witness, it is good without one; but it is best to have a witness.

### *Deed of Release.*

STATE OF GEORGIA, } Know all men by these presents, that I, *John*  
*Houston County.* } *Doe, of the State and County aforesaid*, for and in consideration of the sum of *one thousand dollars, cash in hand, paid by Richard Roe, of the same place*, (the receipt whereof is hereby acknowledged,) do, by these presents, remise, release and forever discharge, for me, my heirs, executors and administrators, said *Richard Roe*, his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, executions, claims and demands, of whatever sort, in law and in equity, which, against the said *Richard Roe*, I ever had, now have, or which I, my heirs, executors and administrators, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof, I have hereunto set my hand and affixed my seal, this *May 1, 1859*.

Signed, sealed and delivered, }  
in presence of }  
*John Stone.* }  
*James Mack, J. P.* }

JOHN DOE. [L. S.]

NOTE.—Any particular transaction between the parties, may be inserted in the Deed, if deemed necessary.

The foregoing form of Deed closes the door of litigation between the parties, for all things in the past, except fraud, which must be alleged and proved.

### *Deed of Lease.*

STATE OF GEORGIA, } This Indenture, made and agreed on this *first*  
*Houston County.* } day of *May*, eighteen hundred and *fifty-nine*, between *John Doe, of said State and County*, of the one part, and *Richard*

*Roe, of the same place*, of the other part, witnesseth, that for and in consideration of the rents, covenants and agreements, hereinafter reserved and contained, and which on the part of said *Richard Roe*, his executors, administrators and assigns, are to be paid, done and performed, he the said *John Doe*, has demised, leased and to farm letten, and by these presents, does demise, lease and to farm let, unto the said *Richard Roe*, his executors and administrators, a certain *lot of Land*, situate in the *tenth* district of said County, (agreeably to original survey,) and known as *lot number forty-nine*, containing *two hundred two and one-half* acres (*one hundred* acres of which are improved and fit for cultivation,) together with all the appurtenances thereunto belonging, or in any-wise appertaining.

To have and to hold said *lot of Land*, with the appurtenances, unto the said *Richard Roe*, his executors and administrators, from the day of the date hereof, for and during the full term of *ten years* next ensuing, and fully to be completed, and ended; yielding and paying therefor, *yearly, on the first day of January*, during the said term, unto the said *John Doe*, his heirs and assigns, the *yearly* rent of *two hundred* dollars: *Provided*, that if it shall happen that the said *yearly* rents, hereby reserved, or either of them, shall be behind and unpaid, by the space of *twenty days*, next after either of the said days of payment, or if the said *Richard Roe*, his executors or administrators, shall assign over or otherwise part with this Indenture, or the premises hereby Leased, or any part thereof, to any person or persons whatsoever, without the consent of said *John Doe*, his heirs or assigns, first had and obtained in writing, under his or their hands and seals, for that purpose, then and in either of the said cases, it shall and may be lawful for the said *John Doe*, his heirs or assigns, into the said premises hereby Leased, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain and re-possess, as in his and their first and former estate or estates.

And the said *Richard Roe* does hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said *John Doe*, in manner following; that is to say, that he, the said *Richard Roe*, his executors and administrators, shall and will well and truly pay or cause to be paid, unto the said *John Doe*, his heirs and assigns, the said *yearly* rent of *two hundred* dollars, in the manner herein-before limited and appointed, according to the reservation thereof, and the true intent and meaning of these presents, (*except the premises, or some part thereof, shall happen to be burned, blown down or damaged by reason of fire or tempest, or unavoidable accident.*)

And also, he the said *Richard Roe*, his executors and administrators, shall and will, at his, their or some of their proper costs and charges, from time to time, and at all times hereafter, during the said term, well and sufficiently repair, uphold and maintain, and keep in repair, the said *farm* and the premises, with the appurtenances herein-before demised, when, where and as often as occasion shall require, (*the casualty of fire, which may burn down or destroy the said farm, its appurtenances or any other part thereof, only excepted.*)

And the said *farm* and premises being so well and sufficiently repaired and maintained, at the end of the said term, or other sooner determina-



tion of this present demise, unto the said *John Doe*, his heirs and assigns, shall and will peaceably and quietly leave and yield up, (except as herein-before excepted.)

And also, that the said *Richard Roe*, his executors and administrators, will at all times hereafter, during the said term hereby demised, bear, pay and discharge all taxes, charges and impositions which shall be taxed, charged, imposed and assessed on the said *farm*, or any part thereof.

And the said *John Doe*, for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said *Richard Roe*, his executors and administrators, that he the said *Richard Roe*, his executors and administrators, paying the *yearly* rent above, hereby observed, and observing, performing and keeping, all and singular, the covenants, articles and agreements herein contained, on his and their part to be observed, fulfilled and kept, according to the true intent and meaning of these presents, shall and may lawfully and peaceably occupy and enjoy the said *farm* and premises hereby demised, with the appurtenances, and every part thereof, without any hinderance or interruption whatever, by the said *John Doe* or his heirs, or any person claiming from, by or under them.

In witness whereof, the said parties have interchangeably set their hands and seals hereunto, the day and year above written.

Signed, sealed and delivered,  
in presence of  
*Charles Smith.*  
*James Mack, J. P.*

JOHN DOE. [L. S.]  
RICHARD ROE. [L. S.]

### *Assignment of a Lease.*

STATE OF GEORGIA, }  
*Houston County.* } For and in consideration of the sum of *five*  
hundred dollars, cash in hand paid, (the receipt  
whereof is hereby acknowledged,) I have and do by these presents,  
assign and set over to *John Stone*, of said County and State, without re-  
course on me, the within Lease. To the only proper use, benefit and  
behoof of the said *John Stone*, his heirs, executors and administrators.

In witness whereof, I have hereunto set my hand and affixed my  
seal, this *August 1*, 1859.

Signed, sealed and delivered,  
in presence of  
*James Jones.*  
*Willis Robb, J. P.*

JOHN DOE. [L. S.]

### *Articles of Assignment.*

STATE OF GEORGIA, }  
*Houston County.* } This Indenture, made this *first* day of *May*,  
eighteen hundred and *fifty-nine*, between *John*  
*Stiles* and *Thomas Stokes*, of the town of *Perry*, in said County and State,  
merchants and co-partners, trading jointly under the firm and style of  
*Stiles & Stokes*, of the first part, and *John Doe* and *Richard Roe*, of the  
same place, merchants and co-partners, doing business under the firm  
and style of *Doe & Roe*, of the second part, witnesseth, that the said  
parties of the first part, for and in consideration of the sum of *five*  
*thousand dollars*, to them in hand paid by the party of the second part,

the said party of the first part have bargained, sold, assigned, transferred, set over and conveyed, and by these presents, do bargain, sell, assign, transfer, set over and convey unto the said party of the second part, all and singular, the following articles and items of property, to wit:—[*here set out fully and at large, each and every article of property conveyed and assigned,*] amounting to the sum of *ten thousand* dollars in the aggregate. Together with all the sums of money, either principal or interest, which may be collected from all or any of the persons, co-partnerships or firms, before mentioned, as the debtors or in anywise liable to the party of the first part by means of the said [*promissory notes, due-bills, judgments, assignments, open accounts, debts, balances, claims and demands,*] as aforesaid; hereby giving and granting to the said party of the second part, their heirs and assigns, full power and authority to ask, demand and receive, sue for and recover, to their own use, the sum of *ten thousand* dollars, with interest thereon, as aforesaid, and to give all necessary receipts, discharges and acquittances, for the same or any part thereof.

To have and to hold the said [*promissory notes, due-bills, judgments, assignments, open accounts, debts, balances, claims and demands,*] as aforesaid, unto the said party of the second part, and the individuals composing the said party of the second part. To the only proper use, benefit and behoof of the said firm and individuals of the second part, their heirs and assigns forever, *as tenants in common*.

In witness whereof, the said party of the first part have hereunto set their hands and affixed their seals, the day and year above written.

Signed, sealed and delivered, }  
in presence of  
*John Smith.*  
*James Mack, J. P.* }

JOHN STILES. [L. S.]  
THOMAS STOKES. [L. S.]

NOTE.—If an Assignment be made to secure Creditors, it must be made in favor of *all* the Creditors; for if one or more Creditors be preferred, the Assignment is void as to the Creditors omitted.

### *Sheriff's Deed under Tax-Collector's Fi. Fa.*

STATE OF GEORGIA, } Whereas, *John L. Halstead*, Sheriff of said  
*Houston County.* } County, did, on the *fifth* day of *August*, of the  
present year, levy a Writ of *Fieri Facias*, issued by *Needum Taylor*,  
Tax-Collector of said County, against *William H. Talton*, for his Tax  
for the present year, upon *lot of Land* number *forty*, in the *tenth* district  
of said County, (said *lot* containing two hundred two and a half acres.)  
And after due and lawful publication being made, in the *State Press*,  
published in *Macon*, of the sale of so much of said *lot of Land* as would  
be sufficient to satisfy said Tax *Fi. Fa.*, said Sheriff proceeded on the  
*third* day of the present month, (the same being the day of sale, ac-  
cording to law,) to the sale of the same—*fifty* acres of said *lot* were first  
offered, for which no bid was made; *one hundred* acres were then of-  
fered, for which no bid was made; *one hundred and fifty* acres were  
then offered, for which no bid was made; the entire *lot* was then  
offered, when *Charles Smith* being the highest and best bidder, at the  
sum of *one hundred* dollars, said *lot of Land* was knocked off to him.



Now, this Indenture, made and entered into, this *third* day of *October*, eighteen hundred and *fifty-nine*, between said *John L. Halstead*, Sheriff, as aforesaid, of the one part, and said *Charles Smith*, of said County and State, of the other part, witnesseth, that for and in consideration of the sum of *one hundred* dollars, cash in hand paid, by the said *Charles Smith*, (at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,) said *John L. Halstead*, Sheriff, as aforesaid, hath granted, bargained and sold, and by these presents, doth grant, bargain and sell, (so far as the office of Sheriff authorizes him,) unto the said *Charles Smith*, all that *lot of Land* situate, lying and being in the *tenth* district of said County, known in said district by the number *forty*, containing two hundred two and a half acres, (more or less,) agreeably to original survey.

To have and to hold the said *lot of Land* unto him, the said *Charles Smith*, his heirs, executors, administrators and assigns, in as full and ample a manner as the same was held and possessed by the said *William H. Talton*, when it was levied upon and sold.

In witness whereof, the said Sheriff hath hereunto set his hand and affixed his seal, the day and year above written.

Signed, sealed and delivered,  
in presence of  
*John Stone.*  
*James Mack, J. P.* }

JOHN L. HALSTEAD, *Sheriff*. [L. S.]

### *Relinquishment of Dower.*

STATE OF GEORGIA, { *Rachel Roe*, wife of the within named *Richard*  
*Houston County.* } *Roe*, this day appeared before the undersigned,  
and being privately (and separate and apart from her said husband,) examined, did declare, acknowledge and agree, that she did of her own free will and accord, subscribe, seal and deliver, the within Deed, conveying *lot of Land number forty-nine*, in the *tenth* district of said County; (which lot of Land came to the said *Richard Roe* by his intermarriage with said *Rachel Roe*,) with an intention thereby, to renounce, give up and forever quit-claim to her right of Dower, or thirds, of, into and to, all and singular, the premises in said Deed mentioned.

In witness whereof the said *Rachel Roe* hath hereunto set her hand and affixed her seal, this *May 1*, 1859.

Signed, sealed and acknowledged,  
in presence of  
*James Mack, J. P.* }

RACHEL ROE, [L. S.]  
*Wife of Richard Roe.*

### *Another Form.*

STATE OF GEORGIA, { "I, A. B., wife of C. D., do declare, that I  
*Houston County.* } have freely and without any compulsion, signed, sealed and delivered the above instrument of writing, passed between D. E. and C. D. And I do hereby renounce all title or claim of Dower that I might claim or be entitled to, after the death of C. D.,

my said husband, to or out of the Lands or Tenements therein conveyed.

“In witness whereof I have hereunto set my hand and seal.” This  
May 1, 1859.

Signed, sealed and delivered, }  
in presence of  
James Mack, J. P. }

RACHEL ROE, [L. S.]  
Wife of Richard Roe.

NOTE.—In all cases where the wife will be entitled to Dower, she must be a party to the Deed ; that is, she must sign, seal and deliver it ; and afterwards her Relinquishment must be made on the back of the Deed, before a Justice of the Peace, or other officer qualified to sign Deeds officially.

A Relinquishment cannot often be necessary, for now a wife is entitled to Dower only in such Lands as her husband may have become possessed of by his intermarriage with her, and those of which he died seized and possessed.

### Marriage Settlement.

STATE OF GEORGIA, } This Indenture of three parts, made and enter-  
Houston County. } ed into this *first* day of *May*, eighteen hundred  
and *fifty-nine*, between *John Doe*, of said State and County, of the first  
part ; *Eliza Swan*, of said State and County, of the second part, and  
*Richard Roe*, of said State and County, of the third part, witnesseth,  
that the said party of the first part, for and in consideration of mar-  
riage to be had and solemnized between said party of the first part,  
and the said party of the second part, does, for himself, his heirs, ex-  
ecutors and administrators, covenant, grant and agree, that [*here set  
out the property, by special and particular description ; whether it be per-  
sonal or real property, or both ;*] and all other property which may be  
given to said party of the second part, by her father or other person,  
by Will or otherwise ; or be inherited by her from her father or other  
person, shall form and remain to be her separate property and estate,  
and shall not, in law or equity, be subject to the payment of the debts  
of said party of the first part, or be subject to be sold, or conveyed, or  
in any manner controlled by him ; but the right and title of said prop-  
erty, shall be vested in the party of the third part, (as Trustee of the  
party of the second part,) for the use and benefit of the said party of  
the second part. And the said party of the first part, further cove-  
nants and agrees, that said party of the second part, may dispose of  
her estate by Will, to any person she may appoint. Subject, how-  
ever, to be used by the party of the first part, with the approbation  
and consent of the party of the third part, during the continuance of  
the coverture, for the mutual benefit and advantage of the parties of  
the first and second parts, and any child or children which may be  
born to them. And the said parties of the first and second parts,  
nominate and appoint the party of the third part, Trustee of said  
property, composing the separate Estate of the party of the second  
part, who is authorized to possess himself of and control said prop-  
erty, in conformity to the provisions of this Indenture. And the said  
party of the third part, consents and agrees to his said nomination and  
appointment of Trustee, as aforesaid.

In testimony whereof, the parties of the first, second and third parts,



have hereunto set their hands and affixed their seals, the day and year above written.

Signed, sealed and delivered, }  
     in presence of  
     *James M. Tait.*  
     *James Mack, J. P.*

JOHN DOE. [L. S.]  
 ELIZA SWAN. [L. S.]  
 RICHARD ROE. [L. S.]

### *Trustee's Bond.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *Charles Smith*  
     *Houston County.* } as security, acknowledge ourselves held and bound  
 unto *Henry G. Lamar*, one of the Judges of the Superior Courts of said  
 State, (and thereby one of the Chancellors of said State,) and his suc-  
 cessors in office, in the sum of *ten thousand* dollars; subject to the fol-  
 lowing condition—

The condition of the above obligation is as follows—whereas, said *Richard Roe* has been appointed, (upon the application of the *Cestui que* Trust, or by Deed, as the case may be,) Trustee for *Eliza Doe*, (formerly *Eliza Swan*,) wife of *John Doe*, of said County, to hold for the separate use of said *Eliza*, the following property, to wit, [*here set out a full and fair description of the trust property.*] Now, should the said *Richard Roe*, well and truly, do and perform, all and singular, the duties required of him as Trustee, as aforesaid, agreeably to his appointment, and the law charge him; and also, well and faithfully account of and concerning his said Trust, then this obligation to be void; otherwise, of force. This *April 20, 1859.*

Attest—

*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
 CHARLES SMITH, *sec'ty.* [L. S.]

NOTE.—Marriage Settlements are very convenient, providing as they do, against disastrous contingencies; they should be more in use than they are; indeed, they should be in common and general use.

A Marriage Settlement may be drawn up *after* Marriage, provided a Memorandum, specifying the property to be conveyed, be drawn up and signed by the party to be charged therewith, *before* the Marriage.

A man may, *after* Marriage, settle property on his Wife, etc., but such Settlements are always looked upon with suspicion, and they do not affect Creditors.

ABSTRACT of the Act of the 13th and 27th of Elizabeth against Conveyances to defraud Creditors and Purchasers.

The 13th Eliz. chap. 5th, for the protection of creditors, enacts, “that every conveyance of real or personal estate, by writing or otherwise, and every bond, suit, judgment and execution, that shall be had or made, to delay or defraud creditors and others, of their debts and other rights, shall be void, as against such creditors, &c., and them only. But that the act shall not extend to any conveyance on good consideration, and *bonâ fide* to persons without notice of the fraud.

The 27th Eliz. chap. 4th, for the protection of purchasers, enacts, “that every conveyance of real estate, with the intent to defraud and deceive any person, who previously or afterwards purchased the same, shall be void as against such other purchasers, and them only.” But the act shall not extend to any conveyance made for good consideration and *bonâ fide*.

And (paragraph 5,) “if any person shall make any conveyance of real estate, with any clause of future revocation, or alteration thereof at his pleasure, and shall afterwards bargain or convey the same estate to any person for a

good consideration, (without revoking the first conveyance,) this first conveyance shall be void, as relates to the said estate, and against the second purchasers, and all claiming under them :” *Provided*, that no lawful mortgage, made *bonâ fide* upon good consideration, shall be affected by that act.—[*For the original Acts, see Schley’s Digest.*]

## CHAPTER XIV.

### LAND.

#### PARTITIONING.

AN ACT to empower the General Court of Pleas, to grant Writs of Partition of Lands and Tenements held in Co-parcenary, Joint-Tenancy and Tenancy-in-Common, in this Province. And appointing the method of proceeding therein.—*Approved March 26, 1767.*

*Whereas*, it would be inconvenient in this Province to pursue the method of dividing Lands and Tenements by Writ of Partition as practised in Great Britain ; and it appears necessary to provide a more easy and less expensive manner of obtaining Partitions—

1. SEC. I. *Be it therefore enacted*, That in all cases, where any persons being of full age, are seized of lands in co-parcenary, joint-tenancy or tenancy-in-common ; or where any lands or tenements shall descend, or be given to any person or persons whatever, in co-parcenary, joint-tenancy or tenancy-in-common, and no provision shall be made, by will or otherwise, how such lands or tenements shall be divided, it shall and may be lawful for such persons, being of full age, or either of them, immediately ; (and also, for any one of such co-parceners, joint-tenants or tenants-in-common, who may be under age, when and as soon as he or she shall attain the age of twenty-one years,) to apply to the General Court of Pleas, [*the Superior Court,*] for a writ of partition, to be devised and framed in the said court, according to the nature of the case. And in case he or she, so coming of age, shall neglect so to do, within the space of twelve months, that then the guardian or guardians of him, her or them, remaining under age, shall be, and he, she or they, is and are hereby empowered, if he, she or they think fit, to apply to the said court for a writ of partition [*see 4 ;*] of which application twenty days’ notice shall be given to the other parties concerned, their agents or attorneys. And upon any such application, and affidavit made of due notice having been given, as aforesaid, it shall and may be lawful for the said court to examine the petitioner’s title and part or share of the premises, to be divided ; and thereupon, to issue a writ of partition, directed to any eleven [*see 3*] persons, whom the court shall think fit, requiring and commanding them, or a majority of them, to make partition accordingly. They being first sworn in court, or before one of the judges, or any magistrate, or other person or persons, for this purpose nominated and appointed by order of court, duly and impartially, to execute such writ. And such partitioners, or persons named in such writ, shall give eight days’ notice of the time of executing thereof, to all the parties concerned, their attorneys or agents ; and thereupon, shall proceed to make a just and equal partition and division of all such lands and tenements, either in entire

Partition of  
Lands, how  
obtained.

Notice of ap-  
plication, and  
affidavit of  
notice.

Partitioners  
to be sworn.

Partitioners  
to give notice  
to parties in  
interest.



Partitioners must make return of their actings and doings.

Return to be the judgment of the Court. Review allowed in certain cases.

And judgment set aside.

Party appealing, to pay costs.

New partition may be awarded.

Partitioners to be compensated.

tracts or parcels, [see 4,] as they shall judge to be in proportion to the shares claimed, and most beneficial to the several co-parceners, joint-tenants or tenants-in-common, according to the best of their knowledge. And shall make return thereof, under their hands and seals, to the said court, within three months after the issuing of such writ, there to remain of record. Which partition or division, so to be made, shall by the judgment of the said court, be final and conclusive, to all the parties concerned. Any law, statute, usage or custom, to the contrary notwithstanding: *Provided always*, that if the defendant or defendants, or persons concerned, or either of them, against whom or their right or title, any judgment is given, shall within the space of twelve months, after such judgment is entered; or, in case of infancy, coverture, insanity of mind, or absence out of the Province, within one year after his, her or their return, on the determination of such inability, apply themselves, to the court where such judgment is entered, by motion, and show a good and probable matter, in bar of such partition; or, that the demandant hath not title to so much as he hath recovered, then and in such case, the court may suspend, or set aside such judgment, and admit the tenant or tenants to appear and plead; and the cause shall proceed according to the due course of law, as if no such judgment had been given. And if the court, upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed and be good against all persons whatsoever, except such other persons as shall be absent or disabled, as aforesaid. And the person or persons so appealing, shall be awarded thereupon, to pay costs; or, if within such time or times aforesaid, the tenants or persons concerned, (admitting the demandant's title, parts and purparts,) shall show to the court any inequality in the partition, the court may award a new partition to be made, in presence of all parties concerned, if they will appear, notwithstanding the return and filing upon record, the former. Which said second partition, returned and filed, shall be good and firm forever, against all persons whatsoever, except as before excepted.

2. SEC. II. That the persons making such partitions, shall be allowed and paid a reasonable charge for the same; and in case the party or parties applying for such writ of partition, shall neglect or refuse to allow and pay such charge, the same shall, upon application, be settled and awarded by the court.

### *Notice of Application for the Writ.*

STATE OF GEORGIA, } To *Richard Roe*, of said County.  
     *Houston County.* } You are hereby notified, that I shall apply at the Superior Court, to be held in and for said County, on the *fourth Monday in April next*, for the appointment of Commissioners to divide *lot of land number forty-nine, in the tenth district* of said County, agreeably to original survey; held by you and myself in *joint-tenancy*. This *May 10, 1859*.

JOHN DOE.

### *Form of Petition.*

STATE OF GEORGIA, } To the Superior Court of said County.  
     *Houston County.* }

The Petition of *John Doe* sheweth, that *Richard Roe*, of said County, and your Petitioner are *Joint-Tenants of lot of land number forty-nine, in the tenth district* of said County; which lot of land contains *two hundred two and a half acres*, agreeably to original survey. That said

*Richard Roe*, as one of the *Joint-Tenants* of said premises, is now and has been for *two years* heretofore, in the full possession and enjoyment of said *lot of land*. And your Petitioner avers, that he, as *Joint-Tenant* with said *Richard Roe*, in said premises, is entitled to *one-half* of said *lot of land*, and brings into Court his title deeds, and prays their examination and establishment by the Court. And your Petitioner being desirous of having said *lot of land* Partitioned between said *Richard Roe* and himself, as aforesaid, prays the appointment of Commissioners for the purposes aforesaid, according to the statute in such case made and provided. And your Petitioner further avers, that notice of this application has been given, a copy of which is hereunto annexed. This May 10, 1859. JOHN DOE.

### *Affidavit of Service.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the *Justices of the Peace* in and for said County,  
*John Doe*, who, being sworn, saith, that *Richard Roe*, the *Joint-Tenant*  
in the foregoing Notice and Petition mentioned, was, *this day*, served  
with a copy of said Notice and Petition.

Sworn to and subscribed,  
before me, this May 10, 1859.  
*James Mack, J. P.*

JOHN DOE.

NOTE.—The *Joint-Tenant* against whom the proceedings are instituted, must have twenty days Notice thereof. The Notice may be served by any person upon the Defendant, his Agent or Attorney.

### *The Commission.*

STATE OF GEORGIA, }  
Houston County. } *By the Superior Court.*

To *James Thomas, William West, John Ross, Timothy Rush and Charles Smith*, Freeholders of said County.

Whereas, *John Doe*, by his Petition makes known to us, that he, the said *John Doe* and *Richard Roe*, of said County, are *Joint-Tenants* of *lot of land number forty-nine, in the tenth district* of said County, containing *two hundred two and a half acres*, according to original survey; the said *John Doe* being, (as appears by his title deeds of file in the Clerk's Office of this Court,) entitled to *one-half* of said *lot of land*. And whereas, said *John Doe* prays the division of said *lot of land* between said *Richard Roe* and himself. And it appearing that the Notice required has been given; therefore, you are hereby authorized and required, after having been duly sworn thereto, and having appointed a competent surveyor, (should you deem it necessary, to aid in the discharge of your duties,) and after giving the Notice to the parties, required by law, to enter upon said *lot of land*, and proceed to make a just and equal Partition and Division thereof, in entire tracts or parcels, as you shall judge to be in proportion to the shares claimed, and most beneficial to the parties interested, according to the best of your knowledge and abilities. And after having made such Partition as aforesaid, you are to make return thereof, under your hands and



seals, into the Clerk's Office of this Court, within three months after the date of this Writ.

*Witness, the honorable Henry G. Lamar, Judge of said Court, this April 20, 1859.*

[L. S.]

WILLIAM H. MILLER, *Clerk.*

### *Oath of the Commissioners.*

You, *James Thomas, William West, John Ross, Timothy Rush and Charles Smith*, do each of you swear that you will duly and impartially execute the Writ of Partition to you directed, by this Court, requiring you to Partition *lot of land number forty-nine, in the tenth district of Houston County*, between the parties in said Commission named; to the best of your skill and ability—so help you God. In open Court, this *April 20, 1859.*

Attest—

WILLIAM H. MILLER, *Clerk.*

### *Notice by the Commissioners.*

STATE OF GEORGIA, } To *Richard Roe*—You are hereby notified,  
*Houston County.* } that, by virtue of a Commission from the Superior Court of said County, to us directed, we shall proceed, on the *tenth day of May next*, to make Partition of *lot of land number forty-nine, in the tenth district of said County*, between yourself and *John Doe*, as *Joint-Tenants* of said lot of land.

*Witness our hands and official signatures, this April 25, 1859.*

JAMES THOMAS, }  
 WILLIAM WEST, } *Com'rs.*  
 JOHN ROSS, }  
 TIMOTHY RUSH, }  
 CHARLES SMITH. }

### *Return of the Commissioners.*

STATE OF GEORGIA, }  
*Houston County.* } *To the Superior Court of said County.*

By virtue of the Commission to us directed, dated the *twentieth day of April, last past*, directing us to make Partition of *lot of land number forty-nine, in the tenth district of said County*, between *John Doe and Richard Roe, Joint Tenants*, of said lot of land; hereby return, that after having been sworn, *in open Court*, to the faithful execution of said Commission, and having given the parties in interest the notice required by law; and having employed *Samuel R. Webb* as Surveyor, we proceeded on the *tenth day of May, last past*, to make partition of said lot of land, between the parties: the following is the result, [*here set out in full an accurate description of the Partition made,*] which will fully appear from the annexed plat of survey, (which is part of the return.) *Three days* were employed in this service.

*Given under our hands and seals, this May 14, 1859,*

JAMES THOMAS. [L. S.] }  
 WILLIAM WEST. [L. S.] } *Com'rs.*  
 JOHN ROSS. [L. S.] }  
 TIMOTHY RUSH. [L. S.] }  
 CHARLES SMITH. [L. S.] }

*Traverse of the Return of the Commissioners.*

SUPERIOR COURT, *October Term, 1859.*—And now comes *Richard Roe*, by his Attorney *Thomas Felder*, and says, that the Return of the Commissioners, in this case, should not be received, or made the order and judgment of the Court, because [*here set out accurately and in full, the objections to the Return.*] And of this he puts himself upon the Country, &c.

THOMAS FELDER, *Att'y pro. R. R.*

*Issue joined by the Parties.*

And now, at the same Term, comes *John Doe*, by his Attorney, *Samuel D. Killen*, and says, that the Return made by the Commissioners in this case, is just and equitable; that it should be made the order and judgment of the Court; be recorded and made binding between the parties. And doth the like, &c.

SAMUEL D. KILLEN, *Att'y pro. J. D.*

*Oath of the Jury.*

You shall well and truly, try the Issue formed on the Return of the Commissioners, and a true verdict give, according to evidence—so help you God.

*Verdict of the Jury.*

We, the Jury, find in favor of the Return.

HENRY SAPP, *Foreman.*

*Judgment of the Court.*

Whereupon, it is considered, ordered and adjudged by the Court, that the Return of the Commissioners be made the judgment of the Court; that the said Return be final and conclusive between the parties concerned, and that it be recorded. And it is further ordered, that the sum of *fifteen* dollars be allowed and paid, by the Defendant, to each of the Commissioners, and the sum of *twenty* dollars to the Surveyor. And it is further ordered that a Writ of Possession issue in favor of the Plaintiff, for the premises by him recovered. And the Defendant in mercy, &c. Judgment signed, this *October 25, 1859.*

SAMUEL D. KILLEN, *Att'y pro J. D.*

NOTE.—For the Writ of Possession, see the Forms at the end of this title.

AN ACT to amend an act, entitled “an act to empower the General Court of Pleas to grant Writs of Partition of Lands and Tenements held in Co-parcenary, Joint-Tenancy and Tenancy-in-common, in this Province. And appointing the method of proceeding therein,” passed the 26th of March, 1767.—*Approved Dec. 22, 1827.*

*Whereas*, by the before-recited act, it is made the duty of the Superior Courts in this State, on application for a Writ of Partition, to appoint eleven persons to perform such duty, which from experience [*proves*] to be unnecessarily expensive—



Number of Partitioners. 3. *Be it enacted*, That from and immediately after the passing of this act, that whenever a writ of partition shall be granted, in terms of the before-recited act, it shall be directed to five freeholders, of the county where such writ shall issue. And the said freeholders, or a majority of them, shall have full power to perform all the duties required by the before-recited act, in cases of partition. And the said freeholders, or a majority of them, shall have power to select a surveyor, to aid them in the discharge of their duties. And the said freeholders shall be subject to the same rules, regulations and restrictions, as are prescribed by the before-recited act, in all cases of partition. Any law to the contrary notwithstanding.

Surveyor may be employed.

AN ACT to regulate the mode of Partitioning Lands and Tenements, in certain cases, in the State of Georgia.—*Approved Dec. 26, 1837.*

Affidavit of party showing that an equitable division cannot be made. 4. SEC. I. *Be it enacted*, That whenever an application shall be made to any of the Superior Courts of this State, for a partition of lands or tenements, held in joint-tenancy, tenancy-in-common, or in co-parcenary, and either of the parties in interest, shall by his or her affidavit, or other proof, make it satisfactorily appear to the court, that a fair and equitable division of said lands and tenements, cannot be made by metes and bounds, by reason of improvements made on said lands and tenements; or by reason of the said lands and tenements being valuable for the erection of mills or machinery of any kind; or by reason of said lands being valuable for mining purposes. And in all cases where it shall be made appear to the court, that the value of the entire lands and tenements will be depreciated by such division, as aforesaid, that then and in that case, the said court shall order a sale of the said lands and tenements, on such just and equitable terms as it shall prescribe; and order the proceeds to be divided among the several claimants, ratably, in proportion to their respective interests, after deducting the expenses of the proceedings.

Court may order a sale of the premises, and the money divided.

Commissioners appointed to make sale, etc. 5. SEC. II. In all cases where it shall be necessary to make a sale of lands or tenements, to effect a just and equitable partition thereof, it shall be the duty of the court to appoint three discreet and proper persons, under such qualifications as it may prescribe, to make sale of the said lands and tenements, after an advertisement of thirty days in one of the public gazettes, on the first Tuesday in the month, at the court-house, in the county in which the said lands or tenements are situate; and to return their proceedings to the next following term of the court.

How titles are to be execut'd. 6. SEC. III. Upon the sale of the said lands and tenements, as aforesaid, the said parties in interest, shall make a title to the purchaser; and in case of failure or refusal of them, or any of them, the said persons appointed under the authority of the court, aforesaid, or any two of them, shall execute a deed of conveyance to the said lands or tenements, to the purchaser or purchasers; which said deed of conveyance shall be as valid and binding in law and equity, as if it had been made by the parties themselves.

## PROCESSIONING.

AN ACT for preventing controversies concerning the Bounds of Land, and for Processioning the same.—*Approved Feb. 2, 1798.*

All Lands to be Processioned, and how. 7. SEC. I. Once in every ten years the bounds of every person's land, shall be processioned or gone round, and the land-marks renewed, in manner following, that is to say: [Election of Processioners, *see* 15.] And all and every person in this State are hereby required to procession and go



round their respective tracts of land, in manner and form as is hereafter pointed out by this act, that is to say, whenever two persons' lines join, they are directed and required to meet and chop or plainly mark the same; (with one or more persons disinterested, to see that they do not disagree respecting the land-marks,) and make new line-trees. But whenever a dispute shall arise about such line, the commissioners or processioners appointed, as aforesaid, shall come forward, with the county-surveyor, to assist in ascertaining and determining the true line between the parties, and mark out the same; each commissioner receiving for such service, one dollar per day, and the surveyor two dollars per day; which shall be paid equally by the parties disagreeing, as aforesaid. And where one of the parties concerned, or his agent or representative, after being duly summoned sixty days [see 8,] before the day for processioning the same, shall fail or refuse to attend, it shall and may be lawful for the other party to call on the processioners, who shall then proceed to mark out the line, at the expense of the party refusing or failing to attend as aforesaid.

Disputes how settled.

Compensation of Commissioners and Surveyor, and how paid.

7\*. SEC. II. All lands throughout this State shall be processioned or gone round, in manner and form as pointed out by this act, in twelve months from and after the first day of June next, under the penalty of one hundred dollars for the omission or refusal of every person or persons so refusing, one-half to go to the informer, and the other to county uses; to be recovered by bill, plaint or information, in any court having cognizance thereof.—[See. 10.]

Lands when to be Processioned; penalty for neglect.

SEC. III. [Repeals all former laws on this subject.]

AN Act to revise and amend the foregoing.—*Approved Feb. 18, 1799.*

8. SEC. II. Whenever any person intends to procession his lands, which adjoin lands belonging to any other person or persons, who may reside in the county in which the lands lie, then and in that case, written notice shall be given to such person or persons, at least ten days before, that he will, on a day specified in the notice, proceed to procession the lands adjoining such person. And if the person so notified shall fail to attend at the time appointed, then the opposite party may, in presence of any two or more of the neighbors, or inhabitants, contiguous to the land, go round and new-mark his tree-lines, which shall be considered, on his part, as fully complying with the before-recited act.

What notice must be given.

Party failing to attend, the other Party may proceed.

9. SEC. III. Whenever any persons own lands in this State, adjoining lands of another who resides out of the county in which the lands [lie, which] may be intended to be processioned, then and in such case, notice shall be given by advertisement in one of the public gazettes of this State, that he will, on a day therein mentioned, proceed to procession his own lands, as herein-before directed; which shall be published, at least, six months previous to the time appointed for processioning the lands. And the expenses of advertising shall be paid by the owner or owners of [the] land, intended to be notified.

Party out of the County, notice given by advertisement.

Who to pay for advertising.

10. SEC. IV. Any person or persons may, as agent or attorney for the owner of any lands to be processioned, on producing a plat or plats, and grant or grants thereof, proceed to procession the same for and in behalf of the proprietors and owners, in like manner as if they were themselves present and had done the same.

Agent or Attorney may act.

11. SEC. V. Whenever the lines of lands are disputed, and are re-surveyed, as directed by the before-recited act, that then and in every such case, a plat of such lands [shall] be made out by the county-surveyor, or his legal deputy, and certified by him and the processioners of the district, and shall be, by said surveyor, recorded in his office. *Provided*, that

In disputed cases, plats to be made out by the s'veyor and recorded in his office.



Nothing to  
affect confis-  
cated lands.

Plats of par-  
ticular lands,  
not recorded,  
Processioners  
to proceed  
notwithstand-  
ing.

Returns of  
elections of  
Processioners,  
where to be  
filed.  
Vacancy how  
filled.

nothing in this act contained, shall extend, or be construed to extend, to affect the tracts of land sold under the confiscation act, where the plats shall not appear of record in the surveyor-general's office, so as to give a preference of title for want of processioning: *And provided also*, that where plats for lands, granted or surveyed for any person or persons, prior to the fourth day of July, 1776, shall not appear of record in the surveyor-general's office, and the loss of the original plat shall be satisfactorily proven to the processioners, by the person holding or claiming any tract or tracts of land, as aforesaid, the said processioners shall proceed to procession from the best evidence in their power to obtain.

12. SEC. VI. The returns of the electors [*elections*] of all processioners heretofore or hereafter to be made, shall be deposited on record in the clerk's office of the superior court, in the county wherein they shall or may be appointed. And where any vacancy shall happen in the appointment of processioners, either by death, resignation, removal out of the districts, or otherwise, such vacancy shall be filled in manner pointed out by the said recited act, and return made thereof, as herein-before directed.—[*See 15.*]

AN ACT more effectually to secure the good citizens of this State, in their titles to their Lands, on the several streams and water-courses, in the same.—*Approved Nov. 26, 1818.*

Where a  
water-course,  
being a line,  
shall change  
its bed, what  
may be done.

13. SEC. I. Where any stream or water-course is the boundary-line of any tract or parcel of land, and shall or may have changed its route, or formed its bed or channel through any tract or tracts of land, or be changed or altered by nature, or art, so as to leave a part or the whole of any tract or tracts of land on the opposite side from that on which it was at the time of survey, then and in that case, it shall be lawful for the proper owner of said land, either by himself or agent, to call upon the county-surveyor, or his deputy, of the county in which the land lay prior to such change, who is hereby authorized and required, to make an accurate survey of each part of a tract so cut off, separately, (including the bed that such water-course formerly occupied, and make out a plat of the same, plainly designating the land to which it was formerly attached,) and record the same in the county-surveyor's office of the county in which the land originally lay; which said plat, when recorded and certified by the county-surveyor, as aforesaid, shall be received as evidence of title, in any court of record in this State, having competent jurisdiction.

Surveyor to  
be paid.

14. SEC. II. The surveyor, when called on to perform any such survey, shall be entitled to receive from the person for whom the land was so surveyed, the same fees as are allowed in the fee-bill now in force.

AN ACT to revive, alter and amend "an act for preventing controversies concerning the boundaries of Land; and for processioning the same," approved February 2d, 1798.—*Approved Feb. 21, 1850.*

Justices of the  
Inferior Court  
to appoint  
Processioners  
for each Dis-  
trict.

15. *Be it enacted*, That from and after the passage of this act, the said recited act shall be and the same is hereby revived. And that it shall be the duty of the justices of the inferior court of each county, or any three of them, at the second regular term of the inferior court for the year eighteen hundred and fifty, [*see 12,*] and at said term of the court, every two years thereafter, to appoint three suitable persons, being citizens of this State, in every captain's district, who shall be processioners of land, for the districts in which they, severally, reside.

AN ACT to amend an act entitled "an act to alter and amend an act entitled an act to alter and amend an act preventing controversies concerning the boundaries of Lands; and for processioning the same," passed February, 1850.—*Approved Feb. 9, 1854.*

16. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever the justices of the inferior courts of any county in the State, shall fail or neglect to appoint processioners at the time and place specified in the above-recited act, the said inferior court, or any three [*or more*] of them, be and they are hereby authorized to appoint processioners at any other time, either in term-time or in vacation.

Processioners may be appointed in vacation.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend the Processioning Laws of this State, approved February 2d, 1798.—*Approved Feb. 20, 1854.*

17. SEC. I. *Be it enacted*, That when any tract of land in this State is situated in two counties, the county-surveyor of either county, and the three processioners of the district adjoining the lands, in either county, or a majority of them, are hereby fully authorized to survey and procession said lands, in both counties, as fully as if the whole tract was situated in either county.

Lands lying in two counties may be surveyed by the surveyor of either.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

NOTE.—It is to be very much regretted that the object of these excellent statutes is defeated by the neglect of appointing Processioners. If there is a single County in the State, where Processioners are appointed, the Compiler is not aware of it; because of this neglect, the statutes are comparatively inoperative; therefore, the Compiler has declined to arrange precedents under them.

## CHAPTER XV.

### FEES AND COSTS.

AN ACT to revise and amend an act for ascertaining the Fees of the Public Officers of this State.—*Approved Dec. 18, 1792.*

1. SEC. 1. The fees of the different public officers herein-after mentioned, may be by them, respectively received, as follows—

#### *Governor's Fees.*

2. For signing a grant for 500 acres or under, . . . . .	\$1 00	Governor's Fees.
For signing a grant above 500 acres, and not exceeding 1,000 acres, . . . . .	2 00	
On all grants above 1,000 acres, at and after the rate of two dollars for every 1,000 acres therein contained.		
Ordering the great seal of the State to any paper of a private nature, . . . . .	1 00	
Which sums shall be paid into the treasury, for the public use before any such grant, or other paper, is signed by the governor.		To be paid into the treasury.



*Secretary of State's Fees.*

Secretary of State's Fees.	3. For a grant of land and, preparing and affixing the seal thereto,	
	if 500 acres or under, . . . . .	\$1 00
	If above 500 acres, . . . . .	2 00
	For registering a grant, . . . . .	50
	For a bond, . . . . .	50
	For a testimonial with the great seal, . . . . .	1 50
	For every search, . . . . .	12½
	For every militia commission, (to be paid by the public), . . . . .	50
	Preparing and countersigning a <i>dedimus potestatem</i> , . . . . .	50
	Entering satisfaction on every mortgage, . . . . .	25
	Drawing and engrossing a proclamation, . . . . .	1 00
	Fixing the great seal of the State to any other paper, . . . . .	1 00
	For a certified copy of a grant or other paper, per copy-sheet . . . . .	6¼

[These Fees are to be paid into the Treasury.]

*Surveyor-General's Fees.*

Surveyor Gen- eral's Fees.	4. For examining a plat, . . . . .	50
	For recording a plat, not exceeding 500 acres, . . . . .	75
	If exceeding 500 acres, . . . . .	1 50
	If exceeding 1000 acres, . . . . .	3 00
	Recording a plat of a town, township or village, . . . . .	10 00
	Transmitting a <i>caveat</i> to the governor, and attending thereon, . . . . .	1 00
	A certified copy of an original record, . . . . .	75
	A certified copy of an original warrant, . . . . .	50
	A search, . . . . .	12½
	Recording and issuing a certificate of a town lot, . . . . .	50

[These Fees are to be paid into the Treasury.]

*County-Surveyor's Fees.*

County Sur- veyor's Fees.	5. Surveying a town-lot and returning a certificate thereof to the surveyor-general's office, . . . . .	\$1 25
	Surveying a tract of land, of or under 100 acres, . . . . .	3 35⅞
	Each hundred acres after the first, 2s. 6d. . . . .	66⅞
	Making a plat, recording, advertising and transmitting the same to the surveyor-general's office, . . . . .	1 25
	Entering a <i>caveat</i> , advertising and giving a certified copy thereof, . . . . .	1 87½
	Attending the trial of the same, . . . . .	93¾
	Each posponement to be paid by the person postponing the same, . . . . .	62½
	Recording judgment and giving a certified copy thereof, . . . . .	62½
	Entering an appeal and giving a certified copy thereof, . . . . .	1 25
	For a re-survey of land by order of court, of or under 100 acres . . . . .	
	12 shillings and sixpence for the first 100 acres, . . . . .	3 35⅞
	For every hundred acres after the first, . . . . .	66⅞
	For making and certifying a plat thereof, and transmitting the same, . . . . .	1 25
	And for any other re-survey, the same as aforesaid.	
	[The 25 per cent. allowed by the act of 1819, <i>see</i> 34, is added, in the above.]	

*Notary Public's Fees.*

6. For every protest, and oath included, not exceeding sixteen copy-sheets, of ninety words, . . . . .	\$2 00	Notary Public's Fees.
Administering an oath, in any other case, . . . . .	25	
For each attendance on any person, to prove any matter or thing, as notary public, and certifying the same, . . . . .	50	
Every other certificate, . . . . .	25	
Noting a protest, . . . . .	1 00	
Registering a protest, per copy sheet, . . . . .	6 $\frac{1}{4}$	
Copy of a protest, per copy-sheet, . . . . .	6 $\frac{1}{4}$	

*Coroner's Fees.*

7. For summoning an inquest on a dead body, and returning the inquisition,	\$12 50	Coroner's Fees.
For providing a coffin and burial expenses,	3 75	
In all other cases, the same as the sheriff.		
[The 25 per cent. allowed by the act of 1819, <i>see</i> 34, is added in the above.]		

*Fees of Governor's Secretaries.*

8. A copy of any paper, not exceeding two copy sheets, . . . . .	25	Fees of Governor's Secretaries.
A copy of any paper exceeding two copy sheets, per copy-sheet, . . . . .	12 $\frac{1}{2}$	
Administering an oath of office to any person, where the profits thereof amount to upwards of 107 dollars and 14 cents (25 <i>l.</i> ) per annum, and giving a certificate thereof, . . . . .	\$1 00	
Certifying a copy or extract . . . . .	25	
For entering a testimonial . . . . .	25	

*Fees of Attorney-General.*

9. Drawing a <i>capias</i> against a person indicted, and not bound over, or against a person presented by a grand-jury, . . . . .	25	Fees of Attorney and Solicitors-Gen.
Drawing a <i>capias</i> against a defaulting juror, . . . . .	50	
Drawing an indictment against a person presented by the grand-jury and bound over, . . . . .	1 00	
Entering a <i>noli prosequi</i> , . . . . .	12 $\frac{1}{2}$	
Attending at judge's chambers to take the affidavit of any person, in criminal cases, . . . . .	1 00	
Drawing an affidavit, or any other instrument of writing, per copy-sheet, . . . . .	6 $\frac{1}{4}$	
For a <i>subpoena</i> in criminal cases, . . . . .	25	
Retaining fee, against persons indicted, . . . . .	3 00	

*Treasurer's Fees.*

10. For every search, . . . . .	12 $\frac{1}{2}$	Fees of Treasurer.
An extract, . . . . .	50	

*Jurors' and Witnesses' Fees—(in civil cases.)*

11. To the petit-jury for each cause tried, to be paid by the plaintiff and taxed in the bill of costs, . . . . .	3 00	Fees of Jurors and witnesses.
Special-jury, for each appeal tried, to be paid by the appellant, and taxed in the bill of costs, . . . . .	3 00	
To each witness, per day, for his or her attendance, for coming and returning allowing 30 miles for a day, not allowing for more than three witnesses, to be paid by the person summoning the same, and taxed in the bill of costs . . . . .	75	



The witnesses to have the same allowance in criminal cases, (where the person prosecuted is found guilty.) [By the Act of 1836, the State's witnesses, attending out of their County, are to receive two dollars per day and mileage.]

*Fees of the Clerk of the House of Representatives, and the Secretary of the Senate.*

Fees of Clerk	12. For every extract of a private nature, per copy-sheet, . . .	6¼
H. R. and	For certifying an extract of a private nature, . . .	25
Secy. Senate.	For an act, passed for the benefit of an individual, or to incorporate a private society, . . .	\$2 00

*Fees of the Powder-Receiver.*

	13. Every barrel of powder of 100 pounds weight, lodged in the public magazine, and delivered out, to be paid by the owner, . . .	37½
	And in proportion, for any other quantity.	
Fees of Powder Receiver.	14. SEC. II. None of the fees herein-before set down or expressed, shall in any case ( jailer's fees for dieting prisoners, and coroner's fees for summoning an inquest and returning an inquisition, and providing a coffin and burial expenses, of a person found dead, and the sheriff's fees for executing a criminal, excepted,) be charged to the public, for or on account of any inability in the person who ought to have paid the same.	
In what cases the public to be accountable for Fees.		
Public officers to give a statement of and receipt for their Fees.	15. SEC. III. Every public officer and person herein mentioned, or their deputy or agent, and every person acting as such, shall, if thereunto required, be obliged to give a statement of the fees demanded, and a receipt for the same, to any person paying any lawful or pretended fee or fees of office, claimed by and paid, to any such public officer or person, herein-before mentioned, his deputy or agent, or person acting as such, under pain that every public officer or person, herein-before mentioned, his deputy or agent, or person acting as such, shall for every neglect or refusal, forfeit the sum of twenty-five shillings, with costs of suit, to be sued for, recovered and applied, in manner herein-after directed : <i>Provided always nevertheless</i> , that all suits and actions which shall be brought or commenced, by virtue of this act, shall be instituted before the end of twelve months, and not otherwise.	
Penalty for neglect or refusal.		
Limits time of action.		
Forfeit four-fold for over-charge.	16. SEC. IV. If at any time after the passing of this act, any public officer or person, herein mentioned, or his deputy or agent, or any person acting as such, shall under pretence of any matter or thing done, transacted or performed, by any such public officer or person, or his deputy or agent, or any person acting as such, demand any other or greater fee than is set down in the table hereunto annexed, every such person, so offending, shall for every such offence forfeit and pay four-fold, to the party aggrieved, for the sum so unjustly demanded or taken ; to be recovered, with cost of suit, before any justice of the peace : <i>Provided</i> , the sum does not exceed his jurisdiction ; or in any court of record, within this State.	
How recovered.		
Table of Fees to be set up in public Offices.	17. SEC. V. Every public officer, or person herein named, and every deputy, agent or person acting as such, shall within ninety days after the passing of this act, cause a true and exact copy of the table or docket of his fees, as the same is established by this act, (such table or docket to be in fair words and figures, without any abbreviation, except sums,) to be placed up, and to be constantly kept in a conspicuous part of the room or place, where he shall usually execute the business of his office or employment, under pain of forfeiting fifty cents for each day's neglect of fixing up the same.	
Penalty for neglect.		

18. SEC. VI. In case any public officer, or any person herein-before mentioned, shall be sued or prosecuted, for or by reason of any fee of office whatever, and verdict shall be given for such public officer or other person; or, if the plaintiff, or prosecutor, shall discontinue such suit or prosecution, or shall be non-suited, then such public officer or other person, shall recover double costs. Plaintiff failing, double Costs to be recovered.

19. SEC. VII. All fines, penalties and forfeitures, incurred under and by virtue of this act, shall be recovered, by action in the superior or inferior courts, without any delay, and shall be applied, one moiety to the use of the State, and the other to the person or persons carrying on the prosecution to the conviction of the offender, except such as come within the jurisdiction of a justice of the peace, and except also, those forfeitures which are declared payable to the party aggrieved. How fines, etc. are to be recovered and applied.

20. SEC. VIII. Any public officer who shall charge or take fees, not allowed by this act, shall on conviction thereof, be dismissed from office. Dismissal from office.

21. SEC. IX. The State fees in the executive department, may be paid in the paper medium of this State. Paper medium.

22. SEC. X. The clerks of the courts, respectively, shall make a return, on oath, of the fees collected on behalf of the State, designating the paper medium from the specie, received by them, previous to the passing of this act, and shall settle with the treasurer agreeably thereto. Fees heretofore collected, to be accounted for.

23. SEC. XI. Any public officer who shall presume, on any pretence whatever, to charge, demand or receive fees for services not done or performed, every such person so offending, shall forfeit and pay to the party aggrieved, four-fold the sum so illegally charged, demanded or received, and shall be immediately dismissed from office. Charging for services not performed, how punished.

24. SEC. XII. No justice or justices of the peace shall tax any costs for the attendance of witnesses, in any cause tried before him or them.—[Witness in Justices' Court, if he resides out of the District, to be paid—see title *Justices' Court*.]

NOTE.—The Officers named in the old Fee Bill, (changed by the Act of 1857,) were Sheriffs, Jailer, Register of Probates or Ordinary, Clerk of the Superior and Inferior Courts, and Constable; the Act of 1819, therefore, which provides for an increase of 25 per cent. "on the salaries of the Public Officers of this State, does not apply to those Officers; but only those who are not included in the Act of 1857.

AN ACT to define and establish the Fees of Ordinaries, Clerks of the Superior and Inferior Courts, Sheriffs, Jailers, Justices of the Peace and Constables of this State; and for other purposes.—*Approved Dec. 22, 1857.*

*Ordinary.*

25. SEC. I. *Be it enacted*, That from and after the first day of March next, the Ordinaries of this State, shall be and they are hereby entitled to demand and receive the Fees herein-after stated— Fees of Ordinary.

For receiving application and granting citation,	\$1 25
For taking and recording administrators' or guardians' bond,	1 00
For issuing letters of administration or letters testamentary	1 50
For recording same,	50
For copy,	50
For signing warrant of appraisement,	50
For receiving an appraisement or sale-bill, and recording the same, if under five hundred dollars,	1 00
If above five hundred dollars, and under two thousand,	1 25
If above two thousand, and under ten thousand dollars,	1 50
If above ten thousand, and under twenty thousand dollars,	1 75



If above twenty thousand, and under fifty thousand dollars, .	\$2 00
If above fifty thousand dollars, .	2 50
For receiving application and granting letters dismissory, (whole service,) .	5 00
For granting citation to show cause why administration should not be set aside or repealed, .	2 00
For entering a <i>caveat</i> against administration being granted or will proven, .	1 25
For each copy of <i>caveat</i> , .	50
For every marriage license, .	1 50
For every order for sale of land, negroes or other property, .	50
For each copy of the same, .	25
For issuing letters of guardianship, .	1 00
For recording the same, .	50
For rule <i>nisi</i> , in each case, .	50
For copy, .	25
For issuing process against a person for not making returns, .	50
For each additional copy, .	25
For each <i>subpoena</i> , .	15
For examining and recording returns on all estates not worth more than two thousand dollars, .	1 00
For all estates worth more than two and not more than five thousand dollars, .	1 25
For all estates worth more than five and not over ten thousand dollars, .	1 40
For all estates worth more than ten thousand dollars, .	1 60
For recording all vouchers accompanying returns of administrators, executors and guardians, per 100 words, .	12
For recording any instrument of writing not mentioned, per 100 words, .	12
For copy of any instrument of writing not mentioned, per 100 words, .	10
For proceedings to authorize titles to be made to lands of deceased persons, (to be paid out of the estate of the deceased,) .	5 00
For commission to free-holders to divide estate, .	1 25
For each certificate and seal, .	60
For entering an appeal and transmitting the proceedings to the superior court, .	1 50

*Clerks of Superior and Inferior Courts.*

Clerks Superior and Inferior Courts. 26. SEC. II. That the clerks of the superior and inferior courts of this State, be and they are hereby entitled to demand and receive the fees herein-after stated.

*Fees of the Clerk of the Superior Courts, in Civil Cases.*

Clerk Superior Court, in civil cases.	For every suit commenced therein, if settled by the parties in vacation, .	\$1 90
	If settled at Court, and recording same on minutes, .	3 75
	For every writ, where there is more than one defendant, (after the first copy,) .	60
	For every suit commenced and prosecuted to judgment, including service for recording petition, process and judgment, .	5 60
	For every <i>subpoena</i> ticket, .	15
	For writ of partition of land, .	3 75
	For recording proceedings in civil cases, per 100 words, .	12
	For every exemplification, per 100 words, .	10

For recording articles of partnership, under the law regulating limited partnerships, . . . . .	\$5 00
For recording proceedings in change of name, . . . . .	1 00
For furnishing and certifying any bill, process, order, &c., in equity, for publication, . . . . .	1 00
For recording notice of carpenters' and masons' lien, . . . . .	1 00
In trials of nuisance, . . . . .	3 75
For rule <i>vs.</i> garnishee, . . . . .	1 00
For issuing commission to examine witnesses, . . . . .	1 00
For recording deeds, . . . . .	60
For recording any instrument of writing (not specified) per 100 words, . . . . .	12
For every foreclosure of any mortgage and recording proceedings, . . . . .	1 25
For every enquiry of titles respecting property levied on by the sheriff and claimed by a third person, . . . . .	1 25
For every affidavit to hold to bail, . . . . .	60
For recording and copying proceedings in chancery and bills of exceptions and transcript to the supreme court, per 100 words, . . . . .	12
For recording <i>remittitur</i> , order and judgment of the supreme court, on minutes, each, . . . . .	1 00
For issuing <i>fi. fa.</i> or <i>ca. sa.</i> each, . . . . .	65
For certificate and seal, . . . . .	60

*Clerks' Fees, in Criminal Cases.*

For all bills of indictment, if settled by the parties or <i>nol. pros'd</i> , including service for docketing and recording on the minutes, and all other service, . . . . .	4 00	Clerks' Fees in criminal cases,
For every bill of indictment, when the defendant is arraigned, tried and found guilty, including all services, . . . . .	6 00	
For transcribing record and evidence in State cases, per 100 words, . . . . .	12	

*Fees of the Clerk of the Inferior Court.*

For each appeal to the superior court, . . . . .	2 00	Clerk of the Inferior Co't.
For every astray horse, mule or ass, for every legal service required, . . . . .	2 00	
On every bull, ox or cow, for all service required, . . . . .	1 25	
On every goat, hog or sheep, . . . . .	30	
For retailers' bond, . . . . .	60	
For retailers' license, . . . . .	60	
For copying and administering oath to retailer, . . . . .	30	
For registration of free persons of color, every legal requirement included, . . . . .	1 00	
For each peddler's license, . . . . .	1 25	Same Fees as C. S. C.
And for any other service performed, the same fees as allowed to the clerk of the superior court.		

*Sheriff.*

27. SEC. III. That the sheriffs of the several counties of this State, be and they are hereby entitled to demand and receive the fees herein-after stated—

For serving a copy of a process and returning the original, . . . . .	2 00
If suit from another county, . . . . .	2 00
If more than one defendant, for each additional copy served, . . . . .	60
For summoning each witness, . . . . .	60

Sheriffs' Fees in Civil Cases.



For summoning jury and attending trial, to assess damages for right of way, . . . . .	\$5 00
For service in every case, on special jury, . . . . .	1 25
For return of <i>nulla bona</i> , . . . . .	2 00
For conducting a debtor under confinement, before a judge or court, . . . . .	1 00
For serving rule <i>vs.</i> garnishee, . . . . .	2 00
If more than one, for each additional copy, . . . . .	60
For summoning jury to try case of nuisance, . . . . .	3 00
For removing nuisance, such fees as the court may deem reasonable.	
On all sums, when the execution does not exceed 50 dollars, and under, 5 per cent. on the amount of <i>fi. fa.</i>	
On all sums above 50 dollars and [ <i>where the</i> ] execution does not exceed five hundred dollars, two and a half per cent.	
All sums where the execution exceeds five hundred dollars, one and a quarter per cent.	
And that no commission shall be charged where the property is not actually sold.	
For making out and executing titles to land, . . . . .	3 50
If wrote by the purchaser, . . . . .	1 00
For making out and signing bill of sale of other property, (Provided that no fee shall be allowed only for one bill of sale, when the same will be sufficient to convey the property to one person or joint purchasers, unless the purchaser or purchasers shall choose more than one.)	1 25
For taking bail bonds, . . . . .	1 00
For forth-coming bonds, . . . . .	1 00
In issues on application of insolvent debtors, (per service not in term-time,) . . . . .	5 00
For executing process, dispossessing tenant holding under plea of rent, . . . . .	3 50
For settling execution, if property be levied on and money paid before sale, . . . . .	2 00
For keeping a horse, mare, mule or ox, per day, . . . . .	25
For each head of neat cattle, per day, . . . . .	05
For [ <i>each head of</i> ] sheep, goats or hogs, per day, . . . . .	04

*Sheriffs' Fees in Criminal Cases.*

Sheriffs' Fees  
in Criminal  
Cases.

For re-committing any prisoner, when a <i>habeas corpus</i> is brought to his relief, . . . . .	1 25
On every copy of a <i>mittimus</i> , . . . . .	25
For every mile a prisoner may be removed under a <i>habeas corpus</i> , . . . . .	25
For removing a prisoner by <i>habeas corpus</i> , when no mileage is paid, per day, . . . . .	2 00
For attending a person taken by warrant to the judge's chamber, . . . . .	1 00
For conducting a prisoner before a judge or court, to and from jail, . . . . .	1 25
For executing warrant of escape, . . . . .	1 00
For executing and returning a bench warrant, . . . . .	1 25
For apprehending a person suspected, if committed or held to bail, . . . . .	1 25
For each person, not exceeding two, who may be employed to guard a prisoner to jail, per day, . . . . .	1 50

For executing a criminal, . . . . .	\$10 00
For whipping, cropping or branding a criminal, . . . . .	5 00

*Jailer.*

28. SEC. IV. That the Jailers of the several counties of this State, be and they are hereby entitled to demand and receive the Fees herein-after stated—

For receiving prisoner or debtor, . . . . .	60
For turning the key or discharging the prisoner by virtue of <i>habeas corpus</i> , by order of the court, judge or justice, . . . . .	60
For dieting a white person, per day, allowing 2 lbs. of bread, 1½ lbs. of beef, 1 lb. pork or ½ lb. bacon, with sufficiency of coffee, water, [ &c. ] . . . . .	50
For dieting negro criminal, per day, allowing 1 quart cooked rice or 1½ lbs. bread, and ½ lb. bacon or 1½ lbs. beef, with sufficiency of water, &c., . . . . .	30
For dieting runaway negro, per day, allowing 1 lb. corn bread, 1 lb. pork or ½ lb. bacon, with sufficiency of water, . . . . .	30
For dieting person confined for debt, per day, allowing a sufficiency of wholesome provisions, coffee, water, &c., . . . . .	50
For turning key on commitment of any prisoner, . . . . .	60
For whipping runaway negro, . . . . .	1 00

(But not allowed to give runaway negro more than thirty-nine lashes, at any one whipping, and not allowed to whip more than twice, without the consent of the owner.)

*Justice of the Peace.*

29. SEC. V. That the Justices of the Peace of this State, be and they are hereby entitled to demand and receive the Fees herein-after stated—

Justices of the  
Peace's Fees.

*Fees in Civil Cases.*

For each case tried by said justices, . . . . .	35	
For a warrant or summons, . . . . .	35	
For affidavit to obtain an attachment or to hold to bail, and taking the bond, . . . . .	75	
For entering a judgment, . . . . .	35	
For each execution, <i>ca. sa.</i> or attachment, . . . . .	35	
For drawing a jury and making out list, . . . . .	30	
For each cause tried by said jury, . . . . .	30	
For affidavit to obtain a possessory warrant and making out the same, . . . . .	75	
For trying the same, . . . . .	60	
For making out interrogatories and certifying the same, . . . . .	1 25	
For making out recognizance, and returning the same to court, . . . . .	35	
For each <i>subpoena</i> for witness, . . . . .	15	
For each affidavit, when there is no cause pending, . . . . .	30	
For every writ of <i>certiorari</i> to the superior court, . . . . .	60	
For taking examination of a person charged with a criminal offence, . . . . .	50	Fees in Crimi-
For examining each witness, in criminal cases, . . . . .	30	nal Cases.
For making out a commitment, . . . . .	35	

*Constable.*

30. SEC. VI. That the Constables of this State, be and they are hereby entitled to demand and receive the Fees herein-after stated—

Constable's  
Fees.

For serving a warrant, summons or attachment, . . . . .	35
For each additional copy of summons, warrant or attachment, . . . . .	30
For summoning every witness, . . . . .	30



For each cause tried, by a justice or a jury,	\$30
For attending each trial in a justices' court,	35
For summoning a jury,	75
For levying a <i>ca. sa.</i> or <i>fi. fa.</i> , and advertising,	35
For settling <i>fi. fa.</i> when the property is not sold,	30
For return of <i>nulla bona</i>	30
For conveying negro under execution, to and from jail, per mile,	5
Attending superior court, per day,	1 00
For summoning a jury on inquest,	1 00
For collecting execution issued by coroner,	75
For keeping a horse, mule, ass or ox, per day,	25
For each head of neat cattle, [ <i>per day</i> ,]	5
[ <i>For each head of</i> ] sheep, goats or hogs, per day,	4
On all sales made by him $6\frac{1}{4}$ per centum on amounts sold.	
For attending a grand jury, per day,	1 00
For attending grand jury, for each bill found, (to be paid by delinquent,)	30
For serving a warrant in criminal cases,	1 25
For keeping and maintaining a prisoner, before examination, not exceeding twenty-four hours,	75
For whipping negro by sentence of court,	1 50
For conveying prisoner to jail, per mile,	5

*Guardians' Fees, in certain cases.*

**Guardians' Fees, in certain cases.** 31. SEC. VII. That when any person is guardian for two or more minors, owners of joint property, it shall be lawful for said guardian to make a joint return of his actings and doings, to the court of ordinary, and charge but for one return.

**Certain Counties exempted.** 32. SEC. VIII. That nothing in this act shall apply to the counties of this State, where there has been special acts for said counties, regulating the fees of the officers, so as to reduce the fees of such officers, in any case.

SEC. IX. [Repeals conflicting laws.]

AN ACT effectually to provide for the payment of Sheriffs', Jailers', and Coroners' Fees, which may be now due, or which may hereafter become due. And for vesting power in the Inferior Courts of this State, for the purpose of carrying this act into full effect.—*Approved Dec. 5, 1801.*

**Tax to be levied by the Inf. Court, to pay the Fees of certain Officers.** 33. SEC. I. From and after the passing of this act, the justices of the Inferior courts are hereby required to levy, annually, a county-tax, equal to all fees which are due, or may become due to the respective sheriffs, jailers and coroners, within the several counties in this State, from the insolvency of prisoners, or for the maintenance of criminals; or, in the case of coroners, for the payment of all fees which have or may become due such coroners for holding inquests on the bodies of persons found dead, and whose estate shall prove insufficient to discharge the legal fees: *Provided*, that all fees for holding inquests on the body of slaves, shall be paid by the owner of such slave or slaves. And it shall be the duty of the collector of the general tax, to collect and pay into the hands of the clerks of such courts, the amount of taxes so assessed and collected, by order of the justices aforesaid; which said amount shall be applied to the payment of such fees as may or have become due to such sheriffs, jailers and coroners, as aforesaid. And the collector shall be allowed the same commissions and fees for such collection, as is allowed by law, for the collection of the general tax, and shall be liable to the same fines and forfeitures, for any default, neglect or improper conduct; which said fines and

**Owner to pay Coroners' Fees. Tax how applied.**

**Collectors' Fees and liability.**

forfeitures may be imposed by the justices of the inferior courts at their discretion.

AN ACT to alter and amend an act entitled "an act to increase the salaries of the Public Officers of this State," passed December 8th, 1818.—*Approved Dec. 16, 1819.*

34. SEC. II. From and after the passage of this act, the fees of the several public officers here-in-after named, be and the same are hereby increased at and after the rate of 25 per cent. on their original fees heretofore established by law, previous to the 1st day of December, 1818; viz., [clerks of the superior and inferior courts, clerks of the court of ordinary, sheriffs,] receivers of tax-returns, county-surveyors, [constables, justices of the peace, jailers,] coroners and tax-collectors.

Fees of certain Officers increased 25 per cent.

SEC. III. All laws and parts of laws militating against this law, be and the same are hereby repealed.

NOTE.—The officers included in brackets are not entitled to the increase allowed by this Act; the *whole amount* of their Fees will be found in the Act of 1857, creating the new Fee Bill.

AN ACT to alter the Juries' and Attorneys' Fees in this State.—*Approved Dec. 21, 1830.*

35. In each civil case, tried in the several courts of record of this State, the jury fee shall be three dollars [and the attorney's fee shall be two dollars.]—*[Attorneys' fee abolished.]*

Jury-Fee.

AN ACT entitled "an act the more effectually to compensate Jurors, and to explain an act assented to the 21st day of Dec., 1830, entitled an act to alter the Juries' and Attorneys' Fees in this State."—*Approved Dec. 24, 1832.*

36. On all actions hereafter to be commenced in the superior or inferior courts of this State, the fee of the jury shall be three dollars on all verdicts which may be signed; and that on all judgments which may be confessed in said courts, the jury-fee shall be one dollar, to be paid by the party taking such verdict or judgment, to be taxed in the bill of costs.

Jury-Fee on Verdicts and Confessions.

SEC. III. All laws and parts of laws repugnant to this act, are hereby repealed.

AN ACT to amend an act passed the 22d December, 1828, entitled "an act to amend the twelfth section of the ninth Division of the Penal Code of this State;" and to provide for the payment of Costs, in certain cases.—*Approved Dec. 25, 1837.*

37. SEC. I. *Be it enacted*, That when it may become necessary for the justices of the inferior courts of this State, to cause a jury to be drawn, summoned and impannelled, to try a cause of nuisance, arising from water-machinery, mill-dam, or otherwise, that the clerk, sheriff, witnesses and jurors, be allowed such fees in said cases, as are allowed by law in the inferior courts of this State.

Fees in trial of Nuisance.

38. SEC. II. When any sheriff or other officer, acting under the order of said court, shall remove any nuisance, machinery or mill-dam, he shall be allowed such fees as the court may deem reasonable and just.

Fees for abating the same.

SEC. III. All laws and parts of laws militating against this law, be and the same are hereby repealed.

AN ACT to give a Retaining or Tax Fee to the Attorney and Solicitor-General, on Writs of *Scire Facias* and on Informations.—*Approved Dec. 29, 1839.*



Fee on Scire Facias on Recognizance. 39. SEC. I. That in all cases hereafter, where any writ of *scire facias* shall be issued to enforce a recognizance, (on the criminal side of the superior court,) the attorney-general or solicitor-general shall be entitled to a fee of five dollars, to be taxed in the bill of costs.

Fee on Information to forfeit Charter. 40. SEC. II. In all cases where an information shall be filed, or a *scire facias* shall be issued for the purpose of procuring a forfeiture of the charter of any corporation, the attorney-general [*or*] solicitor-general shall be entitled to a fee of one hundred dollars, to be taxed in the bill of costs.

AN ACT to alter and amend the eighth section of the Judiciary Act of this State, passed 16th February, 1799; and to define more particularly the Fees of Clerks.—*Approved Dec. 22, 1840.*

Process may be waived. 41. SEC. I. That whenever a defendant or defendants, to any suits in law or equity in this State, acknowledges service, and waives process, it shall not be necessary for the clerk to attach a process.

No service, no Fee. 41\*. SEC. II. No clerk (or sheriff) of the superior or inferior court, shall be allowed fees for any services but such as he actually performs.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to regulate the fees of Attorneys and Solicitors-General; and [*for*] other purposes therein specified.—*Approved Dec. 20, 1849.*

Which Costs first paid. 42. SEC. I. From and after the passage of this act, that out of any moneys arising from fines imposed, inflicted, or collected, on forfeited recognizances, in the superior courts of this State; or for violation of the penal laws thereof, the attorney or solicitor-general bringing the money into court, shall be entitled to have his insolvent list for costs, first paid; then the orders of former solicitors to be paid according to priority of claim.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend the XXVIth section of the Judiciary Law of this State.—*Approved Dec. 12, 1809.*

Whereas, a practice has been adopted and now prevails in some parts of this State, of bringing suits to the Superior and Inferior Courts for debts which constitutionally are, and by law ought to be exclusively cognizable in the Justices' Courts; which practice is injurious and oppressive on many of the good citizens of this State, by subjecting them to more cost than was contemplated by the Constitution and judiciary laws of this State; for remedy whereof—

On Verdicts not exceeding \$30 no more than Justices' costs. 43. *Be it enacted*, That where any suit shall be brought to the superior or inferior courts in this State, and the verdict of the jury shall be for a sum under thirty [*fifty*] dollars, the defendant shall not be charged with more cost than would have necessarily accrued: *Provided*, said recovery had been before a justice of the peace. And the remainder of the court-charges may be retained out of the sum so recovered. And if the verdict of the jury be not of sufficient amount, the plaintiff shall be bound to pay the same: *Provided*, this act shall not extend to and govern cases where the demand set forth in the declaration, shall be proven to exceed the sum of thirty [*fifty*] dollars: *Provided*, nothing herein contained shall extend to any case sounding in damages.—[*Justices' Jurisdiction now extends to fifty dollars.—See Justices' Court.*]

AN ACT to prevent Sheriffs, Coroners, Constables, town and city Marshals, and all other Officers in this State, from retaining Costs on younger Judgments, to the prejudice of the rights of older Judgment-Creditors.—*Approved Dec. 19, 1822.*

44. When any sheriff, coroner, constable, town or city-marshal, or other officer of this State, has several executions in his hands at the same time, against the same defendant, it shall not be lawful for such officer to detain the costs on any younger judgments, to the prejudice of those of older date; except in a case of a younger judgment-creditor, shall previous to older ones, point out property to the officer; then it may and shall be lawful for the officer to retain the levy and advertising costs and no more, on such younger judgment.

None but  
Levying and  
advertising  
Costs to be  
retained on  
younger *fi.*  
*fas.*

AN ACT to define the mode in which Costs under the act entitled “an act to revise and amend an act for ascertaining the Fees of the public officers of this State,” passed 18th Dec., 1792, shall be taxed and collected in future.—*Approved Dec. 20, 1834.*

*Whereas*, in some Circuits of this State, a variety of Practice, in relation to the taxation and collection of Costs, has obtained under the above-recited act. For the purpose of rendering the mode uniform and consistent with the design of the Legislature, in said enactment—

45. *Be it enacted*, That from and after the passing of this act, suitors shall not be required to pay the court-costs, or any part thereof, at the several progressive steps or stages of their suits, as has been required by the decision of some of the courts; but that the mode heretofore practised in other courts, viz., the taxation of the costs which plaintiffs were supposed to have paid to the entering up of judgment, in the judgment of the plaintiffs, be and the same is hereby declared to be the true intent and meaning of the act of 1792, upon this subject. And that the officers of courts be and they are hereby prohibited from demanding or receiving the cost or fees which the said fees-bill, or the acts amendatory thereof prescribes, until after judgment, and then to be raised by the execution of plaintiffs from defendants, if enough can be collected for such purpose; if not, then by a *fi. fa.* or *ca. sa.* issued under the order of the court first had and obtained out of plaintiffs.—[*See 46.*]

Costs not pay-  
able till after  
Judgment.

Manner of  
paying Costs.

Costs not pay-  
able until  
Judgment  
rendered.

SEC. II. All laws or parts of laws militating against any of the provisions or directions of this act, are hereby repealed.

AN ACT to amend an act to define the mode in which Costs under the act entitled “an act to revise and amend an act for ascertaining the Fees of the Public Officers of this State,” passed 18th December, 1792, assented to 20th December, 1834, shall be taxed and collected in future.—*Approved Dec. 27, 1842.*

*Whereas*, in some of the Circuits of this State, a variety of Practice in relation to the taxation and collection of Costs, has obtained, under the above-recited acts; for the purpose of rendering the mode and practice uniform and consistent with the design of the Legislature, in said enactments—

46. SEC. I. *Be it enacted*, That from and after the passage of this act, suitors shall not be required to pay the court-costs, or any part thereof, at the several progressive steps or stages of their suits, as has been required by the decisions of some of the courts; but that the mode heretofore practised in other courts, viz., the taxation of the costs which plaintiffs were supposed to have paid to the entering up of judgment, in the judgment of the plaintiffs, be and the same is hereby declared to be the true intent

Costs how  
taxed and col-  
lected.



and meaning of the act of seventeen hundred and ninety-two upon this subject ; and that the officers of courts be and they are hereby prohibited from demanding or receiving the costs or fees, which the said fees-bill or the acts amendatory thereof prescribes, until after judgment ; and then to be raised by execution of plaintiffs from defendants, if enough can be collected for such purpose ; if not, then upon the return of the *fi. fa.* or *fi. fas.* against defendants, with the entry of *nulla bona* endorsed thereon by the proper officer, *fi. fa.* or *ca. sa.* shall immediately issue against plaintiffs, for the purpose of making costs out of plaintiffs.

SEC. II. All laws and parts of laws militating against any of the provisions or directions of this act, be and the same are hereby repealed.

#### COSTS IN SLANDER CASES.

AN ACT for the limitation of Actions, and for avoiding Suits at Law.—*Approved March 26, 1767.*

In actions for Slander, Damages under 40 shillings, no more cost than D'ages. 47. SEC. VIII. In all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons, in the general court in this Province, or in any other court having power to hold plea of the same ; after the passing of this act, if the jury, upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damage under forty shillings, then the plaintiff or plaintiffs in such action, shall have and recover, only so much costs as the damages so given or assessed amount unto, without any further increase of the same. Any law, statute, custom or usage, to the contrary notwithstanding.

## CHAPTER XVI.

### CITIZENSHIP AND RESIDENCE.

AN ACT to point out the tribunal and mode for the trial of questions of Citizenship, in certain cases ; and to declare what shall be evidence of the same. —*Approved Dec. 19, 1840.*

Superior Court to have jurisdiction. 1. SEC. I. *Be it enacted,* That from and after the passage of this act, the several superior courts of this State shall have jurisdiction over questions of citizenship, which may arise in cases herein-after provided.

Petition, Process and service. 2. SEC. II. It shall and may be lawful for any free white citizen, to file his petition in said court, as in suits of a civil nature, against any person who may claim to exercise the rights and privileges of a free white citizen of this State ; in which he shall distinctly allege, that such person so claiming to exercise and enjoy the rights and privileges aforesaid, is of mixed blood and not a free white citizen. To which the clerk of said court shall annex a process ; and a copy thereof, be served on the defendant, in the manner as now provided for in cases on the common-law side of said court : *Provided,* that before filing such petition, the person filing the same shall make oath, that the facts set forth in it are true, according to his or her belief or knowledge.

Affidavit must be made.

Party Plaintiff, who may be.

3. SEC. III. At any time any suits may hereafter be pending under the authority of this act, it shall be lawful for any person to make him or herself

a party to it, and prosecute the same, subject to all the liabilities, as though he or she had commenced such suit.

4. SEC. 4. All suits instituted as herein provided, shall be tried by a special-jury, at the first term of the court to which the same may be returnable, unless continued according to the rules of practice of said court. And that final judgment shall not be rendered, either for or against the defendant, until there shall be two concurring verdicts, as in cases of divorce, according to the laws now in force. And the final judgment so rendered, shall be deemed and held in all the courts of this State, as conclusive upon the rights and privileges of said defendant.

Question to be  
tried by  
special-jury.

5. SEC. V. On the trial of any suit, hereafter to be instituted by the authority of this act, it shall be lawful for the plaintiff to prove that the defendant is descended from, and stands in the third degree of generation, to him or her, who was or is not a free white citizen of this State, or of any other State whose constitution and laws tolerate involuntary slavery; or that said defendant has one-eighth of Negro or African blood in his or her veins.

There must be  
two concur-  
ring verdicts.  
What may be  
proved on the  
trial, by the  
Plaintiff.

### *Petition under the above Statute.*

STATE OF GEORGIA, }  
Houston County. } To the Superior Court of said County.

The Petition of *John Doe*, a free white citizen of said State and County, sheweth, that *William Scott*, of said State and County, heretofore and now claims to exercise the rights and privileges of a free white citizen of said State, in said County; whereas, your petitioner avers that said *William Scott* is not entitled by law to the enjoyment and exercise of the rights and privileges of a free white citizen of said State, because said *William Scott* is of mixed blood, and not of pure and unmixed blood, and is not a free white citizen as he claims to be, to-wit: *because said William Scott, in his genealogy, descent, pedigree and lineage, is descended from, and stands in the third degree or generation to ancestors who were not free white citizens of this State, or of any other State whose constitution and laws tolerate involuntary slavery, [or whatever other cause may exist, which shows the defendant to be of mixed blood.] But said ancestors of said William Scott were of mixed blood, and not of pure and unmixed blood, and were not free white citizens. [Or that said defendant has one-eighth, or more, of Negro, or African blood, in his or her veins.] Wherefore, your petitioner prays process may issue, requiring the said William Scott to be and appear at the next Superior Court, to be held in and for said County, then and there, to make answer to this question of citizenship. This May 1, 1858.*

JOHN M. GILES, *Pet'r's Att'y.*

### *Affidavit of the Plaintiff.*

STATE OF GEORGIA, }  
Houston County. } In person appeared before the undersigned, a Justice of the Peace in and for said County, *John Doe*, the Petitioner in the above Petition, who being duly sworn, saith, that the facts set forth in said Petition are true, according to his belief (or knowledge.)

Sworn to and subscribed,  
before me, this May 1, 1858.  
*James Mack, J. P.*

JOHN DOE.



NOTE.—The Clerk must enter on the Petition, the date when it was filed in office, and annex to it the common Process. The Sheriff must serve a copy of the Process on the Defendant, as in civil cases.

*Answer of the Defendant.*

WILLIAM SCOTT }  
                   *vs.* } Question of Citizenship in *Houston* Superior  
 JOHN DOE.        } Court. Returnable to *April* Term, 1858.

And now, at this Term comes *William Scott*, and to the Question of Citizenship in the Petition of said *John Doe*, contained, for Answer saith, that he is and claims to be, a free white citizen of the State of Georgia, residing in the County of *Houston*, and as such has the right to exercise and enjoy all the rights and privileges of a free white citizen, in said State and County. That this Respondent is not of mixed blood, but of pure, unmixed blood. *That in his genealogy, descent, pedigree and lineage, he is descended from free white persons, and does not stand in the third, or any other degree, to ancestors who were not free white citizens.* (Or that Defendant has not one-eighth, or other portion of Negro or African blood in his veins, but is of pure, unmixed blood.) And this he is ready to verify, etc.

JAMES A. PRINGLE, *Def't's Att'y.*

*First Verdict of the Jury.*

*April* Term, 1858. We, the Jury of the present Term, find that sufficient evidence has been adduced before us, to require and authorize us to find that the Defendant *William Scott*, is of impure and mixed blood, and is not a free white citizen, [*or said William Scott has one-eighth, or more, of Negro or African blood in his veins, as the case may be.*]

JOHN SMITH, *Foreman.*

*Second Verdict of the Jury.*

*October* Term, 1858. We, the Jury of the present Term, concur in opinion with the Jury of *April* Term, and say, that sufficient evidence has been submitted to us to require and authorize us to find that the Defendant *William Scott* is of impure and mixed blood, and is not a free white citizen, [*or has one eighth, or more, of Negro or African blood in his veins, as the case may be.*]

CHARLES JONES, *Foreman.*

*Judgment of the Court.*

Two special Juries of this Court having concurred in their Verdicts, that *William Scott*, of the County of *Houston*, who claims to exercise and enjoy the rights and privileges of a free white citizen in this State, is not a free white citizen of said State, according to the laws thereof, but is of impure and mixed blood, [*or has one-eighth, or more, of Negro or African blood in his veins, as the case may be;*] it is therefore considered and adjudged by the Court here, that said *William Scott* is not of pure and unmixed blood, but is of impure and mixed blood, [*or has one-eighth, or more, of Negro or African blood in*

*his veins*, as the case may be;] that said *William Scott* is not a free white citizen, and is not entitled to exercise and enjoy the rights and privileges of a free white citizen in this State. Judgment signed, this *October 20, 1858.*

AN ACT to more fully define the legal Residence of Citizens and Inhabitants of this State.—*Approved Nov. 29, 1838.*

*Whereas*, no small degree of embarrassment has arisen, and is likely to arise, from the indefinite manner in which the place of Residence of Citizens and Inhabitants of this State, is defined by law; for remedy whereof—

6. *Be it enacted*, That from and after the passage of this act, the place where the family of any person shall permanently reside, in this State; and the place where any person, having no family, shall generally lodge, shall be held and considered as the most notorious place of abode of such person or persons, respectively.

Residence  
how deter-  
mined.

## CHAPTER XVII.

### PHYSICIAN.

AN ACT to regulate the licensing Physicians in this State; to prevent Apothecaries vending and exposing to sale, within this State, Drugs and Medicines, without a license from the Board of Physicians. And to prevent Merchants, Shop-keepers and all other persons from compounding and preparing Drugs and Medicines, or either.—*Approved Dec. 24, 1825.*

1. SEC. I. From and after the passing of this act, no person shall be allowed to practise physic and surgery, or any of the branches thereof, or in any case prescribe for the cure of diseases, for fee or reward, unless he or they shall have been first licensed to do so, in the manner herein-after prescribed.—[*But see 22.*]

No one to  
practise with-  
out License.

2. SEC. II. If any person shall hereafter presume, without such license, to practise physic, surgery, or in any manner, prescribe for the cure of diseases, for fee or reward, he or they shall be liable to be indicted, and on conviction, shall be fined, not exceeding the sum of five hundred dollars, for the first offence, and for the second, be imprisoned, not exceeding the term of two months; one-half of the fine to enure to him who shall inform, and the other half to the use of the State.

To be indicted,  
and how  
punished.

3. SEC. III. On the trial of all indictments for any of the offences enumerated in this act, it shall be incumbent on the defendant to show that he has been licensed to practise physic and surgery, and to prescribe for the cure of diseases, in the manner herein-after mentioned, to exempt himself from the penalties enumerated in this act.

On trials *onus*  
on the Accus-  
ed.

4. SEC. IV. All bonds, notes, promises and assumptions, made to any person or persons, not licensed in manner herein-after mentioned, the consideration of which shall be services rendered as a physician or surgeon, in prescribing for the cure of diseases, shall and they are hereby declared utterly void and of no effect.

Obligations  
given for ser-  
vices, void  
and of no  
effect.



Board author- 5. SEC. V. In order to the proper regulation of the practice of physic  
ized to ex- and surgery, there shall be established a board of physicians, to be assem-  
amine Appli- bled annually, at the seat of government, [see 21,] who shall, at their an-  
cants and nual meeting, examine all applicants, and if, on such examination, they are  
grant licenses. found competent, shall grant to such applicants a license to practise physic  
and surgery : *Provided*, that seven members of said board shall constitute  
Seven make a a quorum to make such examination and grant such license : *And pro-*  
Board. *vided also*, that if any applicant shall have studied and received a diploma  
License with- from any medical college, the said board, or a quorum thereof, shall license  
out examina- the said applicant to practise, without examination.—[See 22.]  
tion.

Board to meet 6. SEC. VII. The annual meeting of the board of physicians of Georgia,  
annually ; shall be held at the seat of government, [see 21,] on the first Monday in  
their fees for December, in each and every year ; and that the said board shall be en-  
examinations titled to receive and demand, of every applicant, when licensed, the sum  
and Licenses. of five dollars, for each and every examination ; and the sum of five [*dol-*  
*lars*] for every license.

Practitioners 7. SEC. VIII. No part or clause of this act shall have any operation or  
not affected effect, upon any person now practising medicine or surgery, within this  
by this act. State, and who has heretofore been a practising physician, within the  
same.

Apothecaries 8. SEC. IX. No apothecary within this State, unless he be a licensed  
must be physician, shall be hereafter permitted to vend or expose to sale any  
Licensed. drugs or medicines, without previously obtaining a license to do so, from  
Punishment the board of physicians created by this act ; and every apothecary so vend-  
for selling ing or selling drugs or medicines, contrary to the provisions of this act,  
without License. shall be liable to all the penalties imposed by this act on physicians and  
surgeons, practising without a license : *Provided*, that nothing herein con-  
Merchants, tained, be construed to prevent merchants or shop-keepers from vending  
etc. exempt. or exposing to sale, medicines already prepared : *Provided also*, that  
And establish- nothing herein contained shall be so construed as to operate against or  
ed Apothe- upon any person or persons who now are, and heretofore have been en-  
caries. gaged in the sale of drugs and medicines, as apothecaries, or who may be  
and heretofore have been engaged in the vending of drugs and medicines,  
as an exclusive branch of merchandize.

Board to ex- 9. SEC. X. The board of physicians created by this act, shall have the  
amine and power to examine any apothecary who may apply to it for a license,  
License touching their knowledge of drugs and pharmacy, and on finding such  
Apothecary. persons qualified, shall grant such license ; and shall receive therefor, the  
same fees as provided in this act for licenses to practise medicine and  
surgery.

Temporary 10. SEC. XI. To prevent delay and inconvenience, a single member of  
Licenses may the board of physicians may grant temporary license to applicants there-  
be granted. for, and make report thereof to the board at their next meeting, for con-  
Temporay firmation, or further evidence of qualification, to be given by the appli-  
Licenses, how cant : *Provided*, that a temporary license shall not continue in force longer  
long to con- than the next meeting of the board, and that a temporary license shall in  
tinue. no case be granted by one of the board after the applicant has been refused  
a license by the board of physicians.

Board may 11. SEC. XII. The board of physicians be, and they are hereby author-  
elect officers, ized and empowered to elect all such officers and frame all such by-laws  
make by-laws as may be necessary to carry this act into effect. And in case of the death,  
and fill vacan- removal or refusal to act, of any member of said board, the said board, or  
cies. quorum of them, be and they are hereby empowered to fill up any such  
vacancies.

12. SEC. XIII. Said board shall enter in a book, to be kept by them

for that purpose, the names of each and every person they shall license to practise physic and surgery; and the time of granting the same, together with the names of the members of the board present; and shall publish the same in some news-paper printed at the seat of government, within thirty days after granting the same.

Licenses to be registe'd, and names published.

13. SEC. XIV. Said board of physicians shall be considered a body corporate, so far as to hold property both real and personal; keep a common seal; sue and be sued. And that the book so kept by the board, as aforesaid, shall be considered a book of record; and a transcript from the same, certified by the proper officer, under the common seal, shall be taken and received as evidence, in any court of law in this State.

Body corporate and book made evid'ce.

AN ACT to alter and amend an act entitled "an act to regulate the Licensing of Physicians to practise in this State," [*original title*] passed the 24th day of Dec., 1825.—*Approved Dec., 27, 1831.*

14. SEC. I. Whenever the board of physicians may have doubts as to the qualifications of any applicant for license, they may proceed to examine such candidate, notwithstanding he may exhibit a diploma from a medical college, and either grant or refuse a license, as they may find him on such examination qualified, or otherwise, for the discharge of the duties of the profession.—[*But see 22.*]

Board may examine, notwithstanding Diploma.

15. SEC. II. The board of physicians have authority, and it shall be their duty, to prescribe such course of reading, as in their opinion may be necessary and proper, to those who intend to pursue the study of medicine, under private instructors in this State; which course of reading they shall cause to be published in two or more of the public gazettes of this State, and which shall be obligatory on all who may apply to the board for license, after the expiration of two years from the time of such publication.

Board to prescribe and publish a course of reading.

16. SEC. III. It shall not be lawful for the board of physicians to license any person who shall not produce satisfactory testimonials of good moral character.

Good moral character.

17. SEC. IV. Should a quorum of the board of physicians not be in attendance on the day appointed by law for its meeting, those present may adjourn from day to day, until a board can be formed: *Provided*, that any number, not under four, may proceed with the business of the board.

Less than a quorum may adjourn from day to day.

SEC. V. So much of the act of which this is amendatory, as militates against the provisions of this act, be and the same is hereby repealed.

AN ACT to revive and keep in force an act entitled "an act to regulate the Licensing of Physicians to practise in this State," assented to 24th December, 1825, with certain provisions therein named.—*Approved Dec. 23, 1839.*

18. SEC. III. All laws and parts of laws militating against the same recited act, be and the same are hereby repealed: *Provided*, nothing in the said revived act, be so construed as to operate against the Thomsonian or Botanic practice, [*see 20,*] or any other practitioners of medicine in this State.

Not to affect Thomsonian practitioners.

AN ACT to revive and keep in force an act entitled "an act to regulate the Licensing of Physicians to practise in this State," [*title changed, by act of 1832,*] assented to the 24th day of December, 1825.—*Approved Dec. 25, 1847.*

19. SEC. I. *Be it enacted*, That from and after the passage of this act, the above and before-recited act, be and the same is hereby revived and declared to be in full force and operation.

Act of 1825 revived.



Board of Physicians appointed.

Thomsonians exempt from the act of 1825.

20. SEC. II. The following named gentlemen shall constitute the board of physicians of this State, to wit: L. D. Ford; J. P. Garvin; G. M. Newton; R. M. Moore; J. Branham; B. F. Keene; E. A. Broddus; H. T. Shaw; R. Banks; G. D. Phillips; J. Persons; W. J. Johnson; M. A. Franklin; J. M. Greene; T. Fort; B. A. White; C. J. Paine; T. F. Green; Geo. D. Case; H. K. Burroughs: *Provided*, That the graduates of the Botanical-Medical college and the licentiates of a legally established medical board of botanic physicians, shall be fully exempted from the operations of the said act so revived.

SEC. III. All laws and parts of laws militating against the said recited act, be and the same are hereby repealed.

AN ACT to authorize the Board of Physicians of this State, to hold their annual meetings in Milledgeville, or any other place they may appoint, within this State.—*Approved Nov. 24, 1851.*

Board may hold its sessions wherever it may appoint.

21 SEC. I. *Be it enacted*, That from and after the passage of this act, the board of physicians of the State of Georgia, be authorized and empowered to hold their annual meetings in the city of Milledgeville, or any other place they may appoint, within this State.

SEC. II. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to authorize all Physicians within the State of Georgia, having received a Diploma from any Medical College within the United States, to practise Physic in this State, and charge for the same, without License.—*Approved Feb. 13, 1854.*

Having Diploma may practise without License.

22. SEC. I. *Be it enacted*, That from and after the passage of this act, all physicians having received a diploma from any medical college in the United States, be and they are hereby authorized to practise physic within the limits of this State, and charge and collect for the same, without license.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

*Forms.*

## DIPLOMA.

OMNIBUS, AD QUOS HÆ LITERÆ PERVENERINT, SALUTEM:

NOS,

PRÆSES, CURATORES ET PROFESSORES COLLEGII MEDICORUM  
REIPUBLICÆ CAROLINÆ AUSTRALIS,

*Testamur*

P. B. D. H. CULLER,

*Virum probum ac ingenium, apud nos ad studia medendi valde incubuisse; atque in humanioribus literis satis eruditum,*

*et arte medica, peditum per probationes scientiæ,  
peritiæ quo debitas et constitutas esse inventum :*

QUA PROPTER,

## DOCTORATUS IN MEDICINA

AD GRADUM, CUM OMNIBUS HONORIBUS AD EUNDEM PERTINENTIBUS, HUNC  
ADMISSIMUS, ATQUE PRIVILEGIO FACULTATEQUE MEDICINÆ  
ET CHIRURGIAE EXERCENDÆ MUNIVIMUS.

IN CUIUS REI TESTIMONIUM,

*Præsidis Scribæque, Curatorum et Professorum, manus atque  
sigillum, quo in hisce utimur, appone curavimus, die  
Martii quatuordecima mensis.*

ANNO SALUTIS, MDCCXXXVIII.

[SEAL.]

[Names of the Faculty.]

M. KING, *Præs.*

EDW. FROST, *Scriba.*

### *License of a Physician.*

STATE OF GEORGIA, } [Here insert the names of the members of the Board  
Bibb County. } who are present.]

*To all whom it may concern.*—Whereas, *John Doe*, of said County, has made application to the Board of Physicians of the State of Georgia, for License to Practise *Physic and Surgery*, in said State. And whereas, said *John Doe*, upon an examination by said Board, has given satisfactory evidence of his competency to practise, as aforesaid; therefore, said *John Doe* is hereby allowed and authorized, to Practise *Physic and Surgery*, within this State.

*By order of the Board of Physicians, this December 10, 1859.*

[L. S.]

RICHARD ROE, *Sec'ry.*

NOTE.—One member of the Board may grant a License, (until the next annual session of the Board.) to an applicant whom he may deem competent to Practise. In such case, with suitable alterations, the above form will answer.

### *License of an Apothecary.*

STATE OF GEORGIA, } [Here insert the names of the Members of the Board  
Bibb County. } who are present.]

*To all whom it may concern.*—Whereas, *Charles H. Heywood*, of *Houston* County, has made application to the Board of Physicians of Georgia, for License as Apothecary, in said State. And whereas, said *Charles H. Heywood*, upon an examination by said Board, has given satisfactory evidence of his competency to exercise the powers and duties of an Apothecary; therefore, said *Charles H. Heywood* is hereby



allowed and authorized to do and perform all the duties and privileges of an Apothecary, within said State.

*By order of the Board of Physicians, this December 10, 1859.*

[L. S.]

RICHARD ROE, *Sec'ry.*

### *Applicant's Petition for License.*

STATE OF GEORGIA, } *To the Board of Physicians of the State of*  
*Baldwin County.* } *Georgia.*—The undersigned, a citizen of said State, sheweth, that with a view to the Practice of *Physic and Surgery*, in said State, he has been employed for the *two years last past*, in studying the science of medicine in the office of *John Smith, M. D.* That being now prepared to enter upon the Practice, as he conceives himself to be, he solicits an examination, according to the statute in such case made and provided, and the issuing to him a License, etc. This *December 10, 1859.*

JOHN DOE.

### *Certificate of Moral Character.*

I hereby certify that the applicant has been, for *the past two years*, engaged in my office, in the study of the science of Medicine; and that he is of good moral character. This *December 10, 1859.*

JOHN SMITH, M. D.

### BOTANIC OR THOMSONIAN PRACTICE.

AN ACT to establish a Botanico-Medical Board of Physicians in this State; and for the better regulation of the Botanic or Thomsonian Practice of Medicine.—*Approved Dec. 24, 1847.*

None but graduates or licentiates to practice.

1. SEC. I. *Be it enacted*, That from and after the passage of this act, no person or persons, except graduates of the Southern Botanico-Medical College, shall be allowed to practise physic or surgery on the Botanico or Thomsonian system of medicine, or any of the branches thereof; or in any case, to prescribe for the cure of disease, for fee or reward, unless he or they shall have been first licensed to do so, in the manner herein-after prescribed.

Obligations given for services, in certain cases, void.

2. SEC. II. All bonds, notes, promises and assumptions, made to any person or persons, except to said graduates, not licensed in the manner herein-after mentioned, the consideration of which shall be services rendered, or medicines prescribed or furnished as a Botanic or Thomsonian physician or surgeon, in the treatment or management of disease, shall and they are hereby declared utterly void and of no effect.

Botanico-Medical Board to meet annually, and grant Licenses.

3. SEC. III. In order to the proper regulation of the Botanic or Thomsonian practice of physic and surgery, there shall be established a board of physicians and surgeons, to be styled the Botanico-Medical Board of Georgia; to be assembled annually, on the second Monday in February, in the city of Macon; who shall at their annual meeting, examine all applicants, and if on such examination, they are found competent, shall grant to such applicants a license to practise physic and surgery on the Botanic or Thomsonian principles of medicine: *Provided*, that five members of the said board shall constitute a quorum to make such examination and grant such license, but that a less number adjourn from day to day, until such quorum can be formed.

5 members make a quorum.

Fees for Examination and License.

4. SEC. IV. The said board shall be entitled to demand of and receive from every applicant for examination, the sum of five dollars, for such examination, and the sum of five dollars when licensed.

5. SEC. V. No Botanic or Thomsonian apothecary, within this State, unless he be a graduate, as aforesaid, or a licensed Botanic or Thomsonian physician, shall be permitted to vend or expose to sale Botanic or Thomsonian medicines, without previously obtaining a license from the board created by this act. And every person so vending or exposing to sale such medicines, shall be subject to the disabilities imposed by this act on Botanic or Thomsonian physicians, practising without a license: *Provided*, that nothing herein contained be so construed as to prevent merchants or shop-keepers from vending or exposing to sale Botanic or Thomsonian medicines already prepared.

Apothecary  
to be  
Licensed.

Merchants  
may sell  
medicine.

6. SEC. VI. The board of physicians created by this act, shall have the power to examine any apothecary who may apply to it for a license, touching their knowledge of drugs and pharmacy, and on finding such persons qualified shall grant such license, and receive therefor the same fees as provided in this act, for license to practise medicine or surgery.

Apothecary  
may be Licen-  
sed; fees for  
License.

7. SEC. VII. To prevent delay and inconvenience, a single member of this board of physicians may grant temporary license to applicants therefor, and make report to the board at their next regular meeting, for confirmation or further evidence of qualifications, to be given by the applicant: *Provided*, that a temporary license shall not continue in force longer than the next meeting of the board; and that a temporary license, in no case, shall be granted by any one of the board, after the applicant has been refused a license by the said board of physicians.

Temporary Li-  
cense may be  
granted; how  
long it contin-  
ues operative.  
Temporary Li-  
cense may be  
refused, under  
certain cir-  
cumstances.

8. SEC. VIII. Whenever the board of physicians constituted by this act, shall have doubts as to the qualifications of any applicant for license, they may proceed to examine such candidate, notwithstanding he may exhibit a diploma from a botanic institution, and either grant or refuse to license, as they may find him on examination qualified or otherwise, for the discharge of the duties of the profession.

Notwithsta'd-  
ing Diploma,  
applicant may  
be refused Li-  
cense.

9. SEC. IX. This board of physicians have authority, and it shall be their duty, to prescribe such a course of reading and instruction, as in their opinion may be necessary and proper, (to those who intend to pursue the study of the Botanic or Thomsonian system of physic,) under competent instructors, in this State; which course of reading and instruction they shall cause to be published in two or more of the public gazettes of this State, and which shall be obligatory on all who may apply to this board for license, after the expiration of one year from the time of such publication.

Course of  
reading to be  
prescribed  
and publish'd.

10. SEC. X. This board shall have the power to grant to any applicant for license, either a temporary or perpetual license, as their qualifications may warrant.

Temporary or  
perpetual Li-  
cense.

11. SEC. XI. It shall not be lawful for this board of physicians to grant license to any person who shall fail to produce satisfactory testimonials of good moral character.

Good moral  
character.

12. SEC. XII. This board of physicians shall be, and they are hereby authorized and empowered to elect all such officers and frame all such by-laws as may be necessary to carry this act into effect. And in case of death, or removal, or refusal to act, of any member of the said board, the said board, or a quorum of them, be and they are hereby empowered to fill such vacancy.

By-laws, offi-  
cers, vacancy  
in Board, etc.

13. SEC. XIII. Said board shall enter in a book kept by them for that purpose, the names of each and every person they shall license to practise physic, and the time of granting the same, and shall publish the same in some news-paper printed in this State, within thirty days after granting the same.

Names of Li-  
cenciates, to  
be published.

14. SEC. XIV. Said board of physicians shall be considered a body corporate so far as to hold property, both real and personal; keep a common seal; sue and be sued. And that the books kept by the board, as aforesaid,

Body corpo-  
rate—record  
evidence.



shall be considered a book of record, and a transcript from the same, certified by the proper officer, under the common seal, shall be taken and received as evidence in any court of law in this State.

Board appointed.

15. SEC. XV. The following gentlemen shall constitute the Botanico-Medical Board of Georgia, as contemplated by this act, to-wit : William Fisher, M. D.; James Buys, M. D.; L. C. Quinn, M. D.; John T. Cox, M. D.; M. S. Bellenger, M. D.; J. Sinclair, M. D.; L. Bankston, M. D.; James T. Ellis, M. D.; and J. Bryan.

16. SEC. XVI. No part or clause of this act shall be so construed as to have any operation or effect upon any person now practising on the Botanic or Thomsonian system of medicine, within this State.

SEC. XVII. All acts or parts of acts militating against the spirit and intention of this act, be and the same are hereby repealed.

## DIPLOMA.

TO THE FRIENDS AND MAINTAINERS

OF LITERATURE, OF THE ARTS AND SCIENCES, AND OF MEDICAL REFORM,

THE FACULTY OF THE

BOTANICO MEDICAL COLLEGE OF GEORGIA,

*Offer these Letters Patent—greeting :*

**Be it known, that MATHEW HARVEY MEANS**

has attended lectures in the BOTANICO MEDICAL COLLEGE OF GEORGIA, the full time instituted and required by law; that he has been most assiduous and diligent, in the acquisition of all those branches taught in said institution; that he has sustained a creditable examination before the Faculty, and regularly read and defended a dissertation; for all and singular of which, he merits their highest commendation, and is justly entitled to the full confidence, faith and fellowship, of the degree of DOCTOR IN MEDICINE.

In testimony whereof, we, the Professors of said BOTANICO MEDICAL COLLEGE OF GEORGIA, have hereunto affixed our names and the seal of the institution, in the year one thousand, eight hundred and fifty-nine. MACON, Georgia.

[SEAL.]

[Professors' Names.]

NOTE.—The other forms, required by the act of incorporation of the Botanico Medical Board, are so similar to those, (both for Physician and Apothecary,) that are required under the other system, that it is sufficient to refer to those forms.

AN ACT to authorize Dr. J. J. M. Goss, of Jackson; Baily White, of Hancock; Manford J. Jones, of Marion; Isaac H. Hall, of Troup; F. N. Hardman, of Fulton; B. H. C. Beman, of Gordon; and all graduates of the Botanic or Medico Botanic School of Medicine, to practise in this State.—  
*Approved March 5, 1856.*

Graduates may charge for services.

17. SEC. II. *Be it further enacted*, That all graduates of the Botanic or Medico Botanic school of medicine, be and they are hereby fully authorized to practise physic, and all its kindred branches, in this State, and charge for the same in the same manner as though they had graduated in any other school.

SEC. III. [Repeals conflicting laws.]

## CHAPTER XVIII.

## ACADEMIES AND SCHOOL FUNDS.

AN ACT to exempt from taxation the Real Estate belonging to the Academies of this State.—*Approved Dec. 18, 1820.*

1. SEC. I. From and immediately after the passing of this act, all the real estate belonging to, or attached to the different academies of this State, shall be exempt from taxation; together with all such academies as may hereafter be established. Any law or usage to the contrary notwithstanding.

No tax on Real Estate of Academies.

AN ACT to compel persons holding Academy Funds in their hands, to pay interest in certain cases.—*Approved Dec. 20, 1824.*

2. SEC. I. All and every person or persons who now has, or hereafter may have in his or their hands, any money belonging to academies, (other than the trustees of said academies, or persons entitled by law to have the same,) which has arisen from the sales of confiscated property, or otherwise, shall pay at and after [*the*] rate of twenty per cent. per annum, until they shall have settled and paid the same to the trustees of [*the*] academies, or other persons entitled by law, to have and receive the same.

Persons having Academy funds to pay interest. Commissioners liable to pay interest under certain circumstances

3. SEC. II. Any person or persons, whether trustees, commissioners, or agents, of any academy in this State, who shall refuse when required by a majority of the trustees or commissioners of said academy, to pay over to the treasurer, or other person appointed by said commissioners or trustees, as aforesaid, within ten days after demanded, all sums belonging to said academies in their hands, shall be liable to pay the same interest, until paid, as persons in the first section of this act [*are*] subject to, for holding funds unaccounted for. Any law to the contrary notwithstanding.

AN ACT to be entitled an act for the better distribution and application of the Poor-School Fund. And to point out the mode of accounting for the disbursement of the Academy and Poor-School Funds.—*Approved Dec. 22, 1828.*

4. SEC. X. The justices of the inferior courts throughout this State, shall have power to order an appropriation of any part or portion of the surplus county funds, in aid of the provisions now, or which may hereafter be made, for the benefit of county academies, or the education of poor children.

Surplus County funds may be used for Academies, etc

All laws militating against this act, are hereby repealed.

AN ACT to amend an act entitled "an act for the better distribution of the Poor-School Funds; and to point out the mode of accounting for the disbursement of the Academy and Poor-School Funds," passed the 22d December, 1828.—*Approved Dec. 23, 1833.*

5. SEC. I. From and after the passage of this act, the trustees of the poor-schools in the several counties of this State, be required to reject the

Teacher's Accounts must



state number of days, and be sworn to. account of any teacher of a poor child or children, unless the same shall set forth the number of days each child was so taught, [see 29.] And to require the same to be proven before some justice of the peace, or justice of the inferior court.

Ordinary's Accounts must be submitted to G. J. 6. SEC. II. It shall be the duty of the trustees of the poor-school funds in each county, to submit to the grand jury of their respective counties, at the fall term of the superior court, an abstract containing the receipts and disbursements of the moneys drawn by him as trustee, which shall be accompanied by the necessary vouchers.

SEC. III. All laws militating against this act are hereby repealed.

AN ACT to repeal an act entitled "an act to establish a general system of Education by Common Schools," assented to the 26th day of December, 1837. Also, an act to amend an act to establish a general system of Education by Common Schools, assented to the 29th day of December, 1838. And also, to change the Common-School Fund in the State of Georgia to a Poor-School Fund, and to provide for distributing the same.—*Approved Dec. 10, 1840.*

Common-school fund changed to Poor-school fund. 7. SEC. I. *Be it enacted*, That from and after the passage of this act, the fund heretofore set apart, and now known as a common-school fund for the State of Georgia, and such other funds as may be hereafter set apart for teaching the poor, shall become and compose a poor-school Fund for the State of Georgia.

AN ACT to provide for the Education of the poor.—*Approved Dec. 27, 1843.*

Ordinary to levy extra tax for Poor-School purposes. 8. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be lawful for the justices of the inferior courts of the several counties in this State, and they are hereby authorized, to levy and collect an extra tax in their respective counties; [see 19;] sufficient, together with such funds as may be received from other sources, to educate the poor children of their respective counties: *Provided*, such tax shall not be levied without the recommendation of the grand jury of the first court in each year. And that said fund shall be kept separate from all other county funds, and used for no other purpose whatsoever.

Total or partial assistance may be afforded. Ordinary may make rules. 9. SEC. II. Said justices of the inferior court are hereby authorized and empowered to require the justices of the peace, or other persons, in the several militia districts of their respective counties, to furnish them, at such times as they may require, with a list of such children, between the ages of eight [see 34,] and sixteen in their several districts, as may need total or partial assistance in obtaining their education. To apportion the funds among them at their discretion, according to their respective necessities. To appoint commissioners, or such other persons as they may deem proper, (without compensation,) to superintend the proper application of the fund, and the education of the poor. And to pass and enforce such rules and regulations as they may deem best calculated to promote the objects of this act: *Provided*, the same are not repugnant to the laws of this State.

Bank-stock set apart as a permanent Poor-School fund. 10. SEC. III. For the purpose of aiding in the education of the poor, as herein-before provided, seventeen hundred and thirty-three shares of the capital stock of the Bank of the State of Georgia; eight hundred and ninety shares of the Bank of Augusta, and all of the available assets of the Central Bank, after the payment of its debts, be and the same are hereby set apart and appropriated, as a permanent education fund; [see 16;] the annual income whereof shall be distributed to the several counties of this State, and paid to the justices of the inferior courts [*Ordinaries*] thereof ratably, in proportion to the number of poor children therein, as herein set forth. And the scrip for

the bank-stock aforesaid, shall be delivered to the treasurer of the State, and said stock shall henceforth be under his management and control for the purposes aforesaid.—[*And see 33.*]

11. SEC. IV. To facilitate the distribution contemplated in the preceding section, it shall be the duty of the justices of the inferior courts of each county, [*Ordinary of each County,*] to report to his excellency the governor, [*the treasurer,*] on or before the first Monday in November, of each year, the number of poor children in their respective counties, between the ages of eight [*see 34,*] and sixteen years, whose parents are unable to educate them, to be ascertained in the manner pointed out in the second section of this act. And it shall be the duty of his excellency the governor, [*the treasurer,*] to make the said distribution before the first day of January [*see 17*] thereafter, among the counties whose inferior courts, [*Ordinaries,*] actually make returns as aforesaid, before such distribution shall take place. The distributive share of each county may be paid to any person presenting a certified copy of an order of the inferior court, [*Ordinary,*] authorizing such payment.—[*See 18.*]

Ordinary must report to the treasurer.

12. SEC. VI. It shall be the duty of the judges of the superior courts of this State, at the first term of the superior court in each county, in each year, to give this act in charge to the grand jury.

Judges to give this act in charge to G. I.

SEC. VIII. All laws and parts of laws heretofore passed, be and the same are hereby repealed, so far as they conflict with the provisions of this act.

AN ACT to be entitled an act to amend an act entitled “an act to provide for the Education of the Poor.”—*Approved Dec. 29, 1847.*

Ordinary to give notice of having rec'd Funds.

13. SEC. I. *Be it enacted,* That the justices of the inferior courts, [*Ordinaries,*] of the several counties, be and they are hereby required, within ten days after they have received their proportionable part of [*the*] Poor-School Fund, to advertise the same at the court-house and three other public places in their county, that they have received the same for distribution.

### *Advertisement by the School Commissioner.*

STATE OF GEORGIA, } All persons concerned, are hereby notified, that  
Houston County. } the proportionable part of the Poor-School Fund, to which said County is entitled, has been received, and the same is now ready for distribution. Those having claims against said Fund will present them, in conformity to law, for adjustment. This November 20, 1859.

JOHN S. JOBSON, *School Commissioner.*

[AN ACT to amend “an act to provide for the Education of the Poor,” assented to the 27th December, 1843, so far as relates to the County of Warren.] And also to regulate the distribution of the Poor-School Fund, where returns are not made.—*Approved Jan. 18, 1850.*

15. SEC. II. In case of failure to make return of the number of poor children to the governor, no county shall be deprived of its portion of the poor-school fund, under the distribution of 1850, or any subsequent year, but the governor shall allow to such county, such sum, upon the apportionment, as it shall be entitled to, taking the last return made from such county, of the number of poor children, in lieu of the one that should be made.

County not to lose its proportion of Fund for want of Return.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to provide for the Education of the Poor.—*Approved Jan. 22, 1852.*

Permanent fund for the education of the Poor, created and placed under the management of the Treasurer of the State.

16. SEC. I. *Be it enacted*, That eighteen hundred and thirty-three shares of the capital stock of the Bank of the State of Georgia; eight hundred and ninety shares of the capital stock of the Bank of Augusta, and one hundred and eighty-six shares of the capital stock of the Georgia Rail-road and Banking company, all belonging to this State, be hereby set apart as a permanent fund for the education of the poor. And the said fund shall be increased by so many shares of the capital stock of either of said Banks, as can be purchased with the unexpended balance, (if there be any,) in the treasury, of the thirty thousand dollars appropriated to defray the expenses of the State Convention of 1850; and with all the available assets of the Central Bank, after the payment of its debts. And the treasurer of the State is hereby required to make such purchase, in whole or in part, according to the means at any time available therefor. And the scrip of the stocks, so belonging to the State, and [*that*] is to be purchased, shall be under the control and management of the treasurer, for the purposes aforesaid.—[*And see 33.*]

Division of fund how made.

17. SEC. II. The income of the permanent fund aforesaid, shall be divided yearly, among those counties which may have at the treasury of this State, by the first of December, in each year, lists of their poor children, in the manner herein-after pointed out. The division to be in proportion to the number of names on the respective lists; and the quota of each county to be paid to the school commissioner's order, under the seal of his office.

Ordinary School Commissioner.

18. SEC. III. The Ordinary of each county, shall be *ex officio*, school commissioner thereof, and shall take an oath and enter into an obligation, as part of his official bond as Ordinary, to discharge all the duties of school commissioner, as prescribed by this act; and to faithfully apply all the moneys which may come into his hands, in that capacity. He shall also, be entitled to retain, as a compensation for his services as such commissioner, two and one-half per centum, upon all such moneys as he may receive, and the same per centum, upon all such moneys as he may pay out, under the provisions of this act, [*see 32.*]

Pay of Commissioner.

Duty of School Commissioner.

19. SEC. VI. The duties of school commissioner in each county, shall be the following—he shall levy and cause to be collected by the tax collector of the county, such tax as may be recommended by the grand jury of the first superior court in each year, for the purpose of educating the poor; and shall take charge of the same when collected. He shall, each year, between the first of September, and the first of November, make (and keep in a book for that purpose,) a list of all such children in the county, (between the ages of eight and sixteen years, as he may deem unable, from the poverty of themselves or parents, to procure a plain English education, without public assistance. [*And to assist him in making such list, he shall appoint two persons in each militia district, to give him information respecting the poor children thereof; which persons shall take an oath, in writing, before the Ordinary, to faithfully discharge the duties of their appointment, and to return only such children as, in their opinion, are entitled to the benefits of this act. He shall, within the first week of November, each year, forward one copy of said list, for that year, to the treasurer of this State,*] and shall, by the first of December, in each year, have at the State-treasury, his order under the seal of his office, for the quota of his county, in the State-dividend aforesaid. [*He shall lay a copy of this list, for the year next last, before the grand jury of the first court in each year;*] and shall also, lay before them his written

estimate of what county tax will be necessary to secure the tuition of all such children as may be entitled to be placed on the list, for the year then present. He shall pay teachers of poor children, in the following manner, that is to say—he shall keep on file, every such account for the tuition of children on the list for each year, as shall be rendered to him on or before the 25th of December, in that year, proven by the oath of the teacher, specifying the number of days each child was taught, not exceeding the usual rates of such teacher, nor exceeding such maximum as may be established by the Ordinary in each county, [see 29.] And after the 25th of December, he shall proceed to pay all such accounts in full, if the funds in hand be sufficient, or ratably, if insufficient, and always keeping as a fund for the next year, any surplus which may be left.

How to pay Teachers.

When to pay Teachers.

20. SEC. VII. The judges of the superior courts shall give this act, specially in charge to the grand juries of the first courts in each year, together with suggestions and arguments upon the duty and policy of educating the poor: [Provided, that the returns of poor children in the counties embraced in the third and fifth sections of this act, *Lumpkin, Rabun and Union*, shall be made under the oath and in the manner prescribed in the sixth section. And Ordinaries in said counties shall be entitled to retain their commission on the State fund received, but not on its disbursement.]

Judges to give this act in charge to G. J.

SEC. VIII. All laws and parts of laws at all conflicting with this act, are hereby repealed.

### *School-Commissioner's Order for Funds.*

STATE OF GEORGIA, }  
Houston County. }

ORDINARY'S OFFICE—October 1, 1859.

I, *John S. Jobson*, Ordinary of said County, do hereby authorize and empower *John Smith* to receive and receipt, in my name, for all moneys that may be set apart for this County, for Educational purposes, for the year 1859.

*Given under my hand and seal of office.*

[L. S.]

JOHN S. JOBSON, Ordinary,

*And ex-officio School-Commissioner.*

NOTE.—The above order must be accompanied by a list of the children entitled to participate in the benefits of the Poor-School fund. The list must have the Certificate of the Ordinary.

### *Teacher's Account.*

STATE OF GEORGIA, } 1859. John S. Jobson, Esq., School Com. Dr.  
Houston County. } Dec. 9. To Samuel Stone, Teacher.

Tuition of <i>Thomas West</i> , one quarter, ( <i>Spelling</i> )	.	.	\$ 6 00
" " <i>Eliza Willis</i> , two quarters, ( <i>Reading</i> )	.	.	10 00
			<hr/> \$16 00

In person appeared before the undersigned, *Samuel Stone*, a Teacher in said County, who being duly sworn saith, that the above Account is just and true as it stands stated.

Sworn to and subscribed,  
before me, this December 10, 1859. }  
*James Mack, J. P.*

SAMUEL STONE.

NOTE.—By the act of 1858, see 34, it is intended that the beneficiaries of the Poor-



School Fund shall be taught the elementary branches of an English Education ; Teachers, therefore, must specify in their accounts, what has been taught each child, and the *actual time* the Child may have been taught. The School Commissioner should be certain that each account contains these particulars.

AN ACT to amend "an act to provide for the Education of the Poor," approved the 22d January, 1852, in relation to the payment of Teachers.—

*Approved Feb. 18, 1854.*

Surplus of  
Poor-School  
Fund to be ap-  
plied to the  
payment of  
Teachers.

21. SEC. I. *Be it enacted*, that from and after the passage of this act, any surplus which shall remain of the poor-school fund, at the end of any year, after paying such accounts of teachers as shall be presented to the ordinaries by the 25th of December, for that year, shall be subject to the payment of such other accounts of teachers, as shall be proven as now required by law, and presented to the ordinaries before the sitting of the first superior court of the next year.

AN ACT to require Receivers of Tax>Returns in the several Counties of this State, to ascertain the number of Children in their respective Counties, between the ages of eight and sixteen years, and for other purposes therein named.—*Approved Feb. 18, 1854.*

Receiver of  
Tax Returns  
must make  
list of child'n.

22. SEC. I. *Be it enacted*, That from and after the passage of this act, the receivers of tax-returns in the several counties of this State, shall be required to have an additional column to his tax-book, in which he shall enter the number of children of all tax-payers, between the ages of eight and sixteen years, and also, orphans and children of widows paying no tax.

Duty of the  
C. I. C. as to  
list.  
Duty of the  
G. J.  
Ordinary's  
duty.

23. SEC. II. That the returns so made shall be handed over to the clerk of the inferior court, whose duty it shall be to lay the same before the first grand-jury which shall assemble thereafter ; and it shall be their duty to select therefrom and make out a list of all the children entitled to the benefits of the poor-school fund, und erexisting laws. Which list shall be placed in the hands of the ordinary, by which he shall be governed in the payment of teachers having claims upon the poor-school fund.

Failure of G.  
J., the J. I. C.  
to act.

24. SEC. III. That in the event of a failure of the sessions of the superior court, the duty required of the grand-jury under this act shall devolve upon the justices of the inferior court.

SEC. IV. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to render certain the compensation of Teachers of poor children of the respective counties of the State, and to secure to poor children the benefit of the Poor-School Fund.—*Approved Dec. 17, 1857.*

*Whereas*, from a misapprehension or misunderstanding of the laws now in force in relation to the proper ascertainment of the children of this State who are entitled to the benefits of the Poor-School Fund ; or from want of a proper attention on the part of persons entrusted with this duty, many children have been excluded from a participation in the fund provided by law. *And whereas*, many worthy but poor persons, after having taught such children, have been unable to get any compensation therefor ; for remedy whereof—

Ordinary  
made Commis-  
sioner of Poor  
Children.

25. SEC. I. *Be it enacted*, [*That*] the ordinary of each county, and his successor in office, or the person on whom the duties of the office of ordinary may devolve, by whatever name such officer may be called, shall be and is hereby appointed a commissioner of the poor children in his county, respectively.

26. SEC. II. It shall be the duty of said commissioner to require [from]

each justice of the peace in his county, to furnish him with a full and complete list of all the poor children in his district, between the ages of six years and eighteen years, [*but see 34,*] by or before the first day of January, in each year, and every year. Com. to require of J. P. a list of Poor Children.

27. SEC. II. That said commissioners of the poor children shall have full power and authority to enforce obedience from said justices and each of them, by attachment [*as*] for contempt. Commissioner's authority.

28. SEC. IV. That it shall be the duty of said commissioner to enter, plainly, in a well bound book, to be kept for that purpose, the names of all the children entitled to the benefit of the provisions of this act. Names of Children to be entered in a Book.

29. SEC. V. That said commissioner shall have full power and authority to pay competent teachers out of any funds in his hands, when the services shall have been actually performed, such sums as are paid for like services by other patrons of such teachers. Must pay Teachers; manner of ascertaining amount.

30. SEC. VI. That all claims for teaching poor children, shall be submitted to said commissioner, who shall have proof touching such service; and he shall allow and pay, when in funds, all claims, where in his judgment, under the proof, the service has been rendered, and the teacher really entitled to pay, having due regard to the real merits and justice of the claim; whether such service was rendered before or after the passage of this act; or whether such children have been returned or not. Commissioner to pay Teacher, whether returned or not.

31. SEC. VII. That if the said commissioner has not enough funds in hand to pay all claims so audited, in full, he shall pay *pro rata*, as far as his funds will extend, every claim so allowed; to stand on the same footing as to payment, without any regard as to the time when the service was rendered. Claims to be paid *pro rata* where all cannot be paid.

32. SEC. VIII. That said commissioner shall keep regular, fair and full accounts of all his receipts and disbursements, and shall receive as a compensation for all services touching or concerning his office, five per cent. on all sums received and paid out, and no more; and shall present his accounts to the grand jury of the county, respectively, whenever thereto required. Compensation of Commissioner, who must make exhibits to Grand Jury.

SEC. X. [Repeals all conflicting laws.]

NOTE.—The Compiler takes the meaning of the VIIIth section of the above statute to be, that the School Commissioner's compensation, is two and a half per cent. on the amount received, (which covers all incidental expenses connected with the application for and receiving the same;) and two and a half per cent. for all sums paid out.—[*See 18.*]

AN ACT to provide for the Education of the children of this State, between certain ages. And to provide an annual sinking-fund, for the extinguishment of the public debt.—*Approved Dec. 11, 1858.*

33. SEC. I. That one hundred thousand dollars of the net earnings of the Western and Atlantic Rail-road, shall be annually appropriated to the purposes of education, as herein-after specified. \$100,000 set apart as an Education fund.

34. SEC. II. The fund set apart in the first section of this act, shall be added to the present school-fund of this State, to be divided out among the several counties thereof, according to the return of all white children thereof, between the ages of eight (8) and eighteen (18.) And that each county, hereby, have the power to use, enjoy and dispose of the fund, they respectively receive, for educational purposes, in such manner as they may see fit and proper; the plan for each county, to be devised by the grand jury thereof, with the ordinary. And if the grand jury and ordinary fail or refuse to devise a plan, then said fund to be used and employed, under existing laws: *Provided*, that in all cases, the said fund shall be used for instruction of children in the elementary branches of education: *And provided further*, that that portion of said fund to be distributed to Chatham county, shall be expended by the justices of the inferior court, through the school commissioners of said county. Ages of Children entitled. Grand Jury and Ordinary to adopt plan; if they fail Fund to be disbursed under existing laws. Elementary branches. How in Chatham County.



Receiver of  
Tax-Returns  
duty in ascer-  
taining Chil-  
dren.

duty of  
Grand Jury,  
in this respect.

How Educa-  
tional fund  
may be  
increased.

Inferior Court  
may raise  
more funds by  
Tax.

Ordinary to  
be Treasurer.

Ordinary to  
furnish ac-  
count to  
Grand Jury.

Children paid  
for by County  
in which they  
reside.

Governor to  
draw warrant  
in favor of  
Ordinary, pro-  
vided he fur-  
nishes certain  
information.

Ordinary may  
withhold  
funds.

Teacher not to  
be paid with-  
out certificate  
of Board of  
Examiners,  
who must be  
sworn.

Governor to  
substitute  
Bonds for  
those now out,  
and to arrange  
them, etc.

35. SEC. III. That the receiver of tax-returns of each county, shall require of each tax-payer, when giving in his taxable property, to return, under oath, the number of his children, between the ages of eight and eighteen years. And it shall be the duty of the grand jury of each county, at the next term of the court after the tax-receiver has completed his digest, to examine the same, and if any of said children are left out of the returns, then the said grand jury shall make every effort in their power, to ascertain the names of those omitted, and have them added to the rest [*list*].

36. SEC. IV. That in order to augment said educational fund, whatever fund may be in the treasury, not otherwise appropriated, at the time of such appointment [*apportionment*,] over and above the expenses, ordinary and extraordinary, of the State government, shall be added to the fund herein-before set apart for educational purposes, and distributed in the same manner.

37. SEC. V. That the inferior court of each county, shall upon a recommendation of the grand jury thereof, assess such a per cent. upon the State-tax, as they may deem right and proper, if any; to augment said educational fund, for said county. And the ordinary of each county shall be the treasurer of said fund, and shall give bond to the justices of the inferior court, in the sum of double the amount appropriated to his county. And the several ordinaries shall make out and present to the grand juries, at the spring term of the superior courts, a full account current of all receipts and expenditures, stating items, and amounts left over from previous years; and shall make oath to the truth of their accounts, and a false oath thereon shall be punished as perjury.

38. SEC. VI. That the tuition of those children entitled to participate in this fund, who shall attend school out of the county in which they reside, shall be paid out of the fund of the county in which they do reside.

39. SEC. VII. That the governor be and he is hereby authorized, to draw his warrant out of [*on*] the treasury for such sums as may be in the treasury subject to distribution under this act, in favor of the ordinary of each county, on the third Monday in November, of each year: *Provided*, the ordinary shall have first furnished the governor with the number of children in his county, between the ages aforesaid; the number taught the elementary branches of an English education; the number taught the higher branches of education, and the rates of tuition, in the elementary and in the higher branches; and all other facts and statistics which his excellency may require said ordinaries to obtain and return, and which he may deem useful in aid of future legislation.

40. SEC. VIII. That the several ordinaries, as a means of collecting of the teachers or trustees of schools and academies, the information and statistics contemplated in this act, shall have the power to withhold the fund apportioned, or due, any teacher or trustees, until his terms or requisitions for information, are complied with. And no teacher shall participate in the benefits of this fund, for any tuition rendered, until he shall obtain a certificate of a board of examiners, appointed for that purpose, by the justices of the inferior court, of his qualification to teach the branches of education, contemplated by this act; and also, of good moral character. And the said board of examiners, shall make oath, in every instance, to discharge faithfully, their duties, and [*to*] decide impartially.

41. SEC. IX. That the governor shall be hereby authorized and required, as far as may be practicable, to substitute other State-bonds, bearing [*the*] same rate of interest, for those now in the hands of holders, and that he issue new bonds, and arrange them upon such a schedule and payable at such period or periods, in the future, as that by providing annually, a sink-

ing fund of certain amount, the whole principal of the public debt, (the interest being semi-annually paid, as now provided by law,) shall be extinguished by the time the last bonds shall become due. This sinking fund, when ascertained, shall be regularly and punctually paid, out of the net earnings of the Western and Atlantic Rail-road. And until the schedule of the public debt is fixed, and the amount of sinking fund is ascertained, the governor shall use so much of the earnings of the road, as shall be necessary to meet the bonds, (annually falling due,) in payment of the same, and in the purchase or payment of other bonds, the period for the payment of which is left to the option of the State.

Sinking fund to be raised from the earnings of the W. and A. R. R.

42. SEC. X. That whenever the governor, shall by means of the sinking fund, or by any other fund applicable to the purpose, pay and take up any portion of the bonds of the public debt, he shall issue an equal amount of bonds, in sums of one thousand dollars, bearing interest at six per cent., payable at such period in the future, as he may deem best for the objects and interests in view, to the Secretary of State, as the trustee of the educational fund of Georgia; so that, as the public debt is extinguished, the educational fund shall be increased. And the interest on said educational fund shall be, annually, appropriated to educational purposes.

Amount of Bonds re-deemed to enlarge Educational funds.

43. SEC. XI. That the governor be authorized to make a deposit, in either of the banks of Savannah or Augusta, on the best terms practicable, of any moneys which may accumulate in the treasury, and which may be subject to the appropriations contemplated by this act, such deposit to be made upon condition that such portion of it as shall belong to the fund provided for distribution for school purposes, in this act, shall be drawn by the third Monday in November, of each year. And such portion of said deposit as forms a part of the sinking fund, under the provisions of this act, shall be drawn at any time, at the option of the governor, when he may have an opportunity to purchase, at par, the bonds of the State.

Governor authorized to deposit certain funds, upon certain conditions, with Banks of Savannah or Augusta.

44. SEC. XII. This act shall take effect immediately, all conflicting laws, to the contrary, notwithstanding.

### *Bond of Ordinary, as Treasurer of Poor-School Fund.*

STATE OF GEORGIA, } We, *John S. Jobson*, (Ordinary of said County,)  
*Houston County.* } as principal, and *James R. Felder*, as security,  
 both of the county aforesaid, acknowledge ourselves held and bound unto *Henry M. Holtzclaw, William F. Postell, John D. Winn, John H. Ragin, and William T. Swift*, Justices of the Inferior Court of said County, and their successors in office, in the sum of *one thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *John S. Jobson*, is by law made Treasurer of the Poor-School Fund of said County: now, should the said *John S. Jobson*, as Treasurer, as aforesaid, well and truly, do and perform, all and singular, the duties required of him, by law, as Treasurer, as aforesaid, then the above obligation to be void; otherwise, of force. This *May 1, 1859*.

Approved—

*James Mack, J. P.*

JOHN S. JOBSON, *prin'l.* [L. S.]

JAMES R. FELDER, *sec'ty.* [L. S.]

NOTE.—The above bond must be executed for “the sum of double the amount appropriated” to the County of the Treasurer.



## CHAPTER XIX.

## ELECTIONS.

AN ACT to regulate the General Elections in this State, and to appoint the time of the meeting of the General-Assembly.—*Approved Feb. 11, 1799.*

Elections for  
Members of  
the Legisla-  
ture and Con-  
gress, when,  
where and  
how conduct-  
ed.

1. SEC. I. All elections for members to represent this State in the General-Assembly thereof, and for representatives in Congress, shall be held at the court-house, or place appointed for holding the superior courts in the respective counties, and the electors thereat shall vote *viva voce*, [by ballot—see 4.] It shall be the duty of any three or more of the magistrates of each county, not being candidates, [see 16,] to preside at and make returns of all elections for senators and representatives in the General-Assembly, and representatives in Congress. And the sheriff of each county, or his deputy, [see 16,] is required to attend at such elections, for the purpose of enforcing the orders of the presiding magistrates, and preserving good order. That the general elections shall be held annually, on the first Monday in October.

Fraudulent  
returns, etc.  
how punished.

2. SEC. II. If the superintending magistrates, or officers, at such elections, shall make a fraudulent return, or they, or either of them, while superintending at such election, or any candidate, shall influence or endeavor to influence, or persuade any voter not to vote as he first designed or intended; or shall take any undue means to obtain a vote, he or they shall forfeit for the first offence \$100, to be recovered by information in any court having jurisdiction thereof; and if a justice, shall be forever disqualified from serving in the commission of the peace; and if a candidate, shall be thereby incapacitated from serving in the post or place for which he may be elected. That if any person or persons whatsoever, shall on any day appointed for holding such elections, presume to violate the freedom of such election, by any arrest, menace or threat, or attempt to over-awe, affright or force any person qualified to vote, or offer any bribe to induce him to vote contrary to his inclination; or shall, after said election is over, menace or despitefully use, abuse or insult any person because he hath not voted as he or they might have wished him, every such person so offending, upon sufficient proof of such violence or abuse, menacing or threatening, before any justice of the peace, shall be bound over to the superior court, himself in \$100, and two securities in \$50 each, to be of good behavior and abide the sentence of said court, where if the offender or offenders are convicted of such offence, as aforesaid, then he or they shall, respectively, for each offence, forfeit a sum not exceeding \$100, and be committed to jail, without bail or mainprize, until the same be paid; which said fine, so imposed, shall be recovered by writ of *feri facias* or *ca. sa.*, issued and signed by the clerk of said court, under and by virtue of the sentence of the same; and the sheriff of the county is hereby required to levy such writ, forthwith. That no civil officer shall execute any writ or civil process whatsoever, upon the body of any person qualified to vote at any election, as aforesaid, either in his journey to or return from, or during his stay there upon that account, under a penalty not exceeding \$500: *Pro-*

Justice and  
Candidate,  
how punish-  
ed.

Freedom of  
Election not  
to be violated  
by the arrest,  
etc. of voter;  
punishment  
of violator.

Voter not to  
be arrested on  
civil process.

*vided*, he shall not be more than four days on his journey, going to, returning from, and stay at the place for holding said election; to be recovered of and from the officer who shall serve any process or arrest, as aforesaid, after such manner and form, and to be disposed of as herein-before directed. And all such writs or civil process, executed on the body of any person, either going to, returning from, or being at the place where such election is appointed, within the time before limited, he being qualified to vote thereat, are hereby declared null and void. That at the general election, which shall be held for members of the General-Assembly, on the first Monday in October, 1800, and at every second general election thereafter, the electors at such election, shall vote for members to represent this State in the house of representatives of the United States.—[See 32, &c.] That no person shall be elected a representative in Congress, who has not been an inhabitant of this State three years next preceding his election, and paid his tax [see 39] regularly during that time: [and lives within the district—see 34,] nor shall he hold any office of profit under this State or the United States, during the time for which he may be elected a representative. That the names of the several candidates be kept on separate papers, and the number and the names of the voters shall be sealed up, together with an accurate state of the poll, under the hands of the presiding magistrates, and transmitted, by express, to his excellency the governor, within twenty days after closing the poll at such election, who is empowered to draw on the treasury for the payment of such express, not exceeding \$2 per day. That the governor, or commander-in-chief for the time being, shall within five days after the expiration of the said twenty days, herein-before allowed for making returns, count up the votes from the several counties, or such of them as may have made returns, for each person, and immediately thereafter issue his proclamation, declaring the person having the highest number of votes and qualified, as aforesaid, to be duly elected to represent this State, in the house of representatives of the United States, and to grant a certificate thereof, under the great seal of the State, to each of them. That where any two or more persons have an equal and the highest number of votes, [other than those duly elected in the general poll.] then and in that case, the governor shall issue his proclamation, directing a new election. That in case any person duly elected, being in this State and notified thereof, in manner herein directed, shall not within twenty days, and if out of the State, within forty days after such notification, signify his acceptance, or shall depart this life, the governor, or commander-in-chief, shall order a new election, to be held in like manner as herein-before pointed out. That all writs of elections to fill vacancies that may happen, for members of the General-Assembly of this State, or house of representatives of the United States, shall be directed to the justices of the inferior courts of the respective counties, who are hereby required to give public notice thereof, and cause the same to be held, in manner and form as herein-before pointed out, agreeably to such writ. That the presiding magistrates at any election for members of the General-Assembly of this State, or representatives in Congress, are hereby empowered and required to appoint three clerks to attend the said elections, whose duty it shall be to keep three rolls.—[See 41 and 50.]

Civil Process  
declared null  
and void.

Qualification  
of Representa-  
tive to Con-  
gress.

Returns of  
Elections,  
how made up.

Governor to  
count the  
votes, issue  
his proclama-  
tion and certi-  
ficates, etc.

In case of tie,  
a new election  
to be ordered.

Acceptance  
must be made  
known.

Writs of elec-  
tion to fill  
vacancies,  
how directed.

Clerks to be  
appointed.

Meeting of  
the Legisla-  
ture.

Elections to  
be by ballot.

3. SEC. III. The General Assembly of this State shall, from and after the passing of this act, meet on the first Monday in November annually.—[See 15.]

AN ACT supplementary to the foregoing.—*Approved Dec. 4, 1799.*

4. SEC. I. In future all elections shall be by ballot.



AN ACT to prescribe the mode of choosing the Electors of President and Vice-President of the United States, to which this State is entitled by the Constitution of the United States.—*Approved Dec. 18, 1824.*

How and when the Electors of P. and V. P. of the U. S. shall be elected.

5. SEC. I. On the first Monday in November, 1828, and on the first Monday in November of every fourth year thereafter, [see 30,] an election shall be held throughout this State, at the several places of holding elections for senators and representatives in the General-Assembly, for the purpose of choosing electors of president and vice-president of the United States; which elections shall be opened and closed at the same hour and in the same manner, and shall be superintended and conducted by the same magistrates and officers, as by law shall be authorized to superintend and conduct the general elections of this State.

Who entitled to vote.

6. SEC. II. At the said elections, every person entitled to vote for members of the General-Assembly, or representatives to Congress, may vote for a number of persons equal to the whole number of representatives and senators to which this State may be entitled in the Congress of the United States. And that it shall be the duty of the justices or magistrates presiding at the elections to be held under the authority and according to the provisions of this act, to make immediate returns to the governor of the State, of the result of said elections; which returns shall clearly exhibit the number of persons voting for electors, the number of votes given in, the names of persons voted for, and the number of votes which each may have received.

How and by whom the Returns are to be made.

In districts, Returns to be consolidated.

7. SEC. III. In counties where by law the votes for members of the General-Assembly shall be given at different places, it shall be the duty of the persons presiding at the different district elections, to meet and consolidate the returns of the district elections, as by law [is] required to be done at the general elections; which consolidated returns, exhibiting the result of the elections, as required by the second section of this act, they shall immediately forward to the governor of this State.

AN ACT for the payment of such person or persons as may be employed by the Superintendents of the Elections of Electors of President and Vice-President of the United States, of Governor of this State, and Members of Congress in the Several Counties of this State, to take the same to the seat of government.—*Approved Dec. 22, 1828.*

Election Returns when and how to be made.

Express may be employed.

Express how paid.

8. SEC. I. From and after the passage of this act, it shall be the duty of the officers who may superintend the election of electors of president and vice-president of the United States, of governor of this State, and members of congress, in the several counties of this State, to transmit by mail to his excellency the governor, the result of said elections as soon thereafter as practicable. And in those counties where no mail passes within seven days after the elections are determined, to the seat of government, it shall be the duty of the aforesaid superintendents of said elections to transmit the same to his excellency the governor, by a special messenger, to be by them employed for that purpose.

9. SEC. II. Such person or persons as may be employed by the officers superintending the elections aforesaid, according to the provisions of this act, shall receive for the service by them so rendered, such sum as may be deemed by his excellency the governor, just and proper, and that the same be paid out of the contingent fund.

NOTE.—It is probable that the last clause of the first section, and all of the second section of the above act, are obsolete. The employment of a person to convey the Returns to the Governor, (and the payment of such person,) is only allowed "where no mail passes within seven days after the elections are determined;" if there be such a place in the State of Georgia, it is unknown to the Compiler.



AN ACT to prescribe the manner of holding Elections at the several Election Districts in the several Counties of this State; and to punish those who may defeat or violate the Election Laws of force in this State.—  
*Approved Dec. 23, 1830.*

10. SEC. I. From and after the first day of June next, one justice of the inferior court, or one justice of the peace, and two freeholders; or two of the aforesaid justices and one freeholder, [*see 28,*] shall superintend the elections in each and every election district which now is or which hereafter may be established, in any of the counties of this State, for the election of governor, members of Congress, members of the General Assembly, electors of President and Vice President, or county officers.

Who may superintend Elections.

12. SEC. III. The superintendents, or a majority of them, of the district elections in the several counties of this State, shall and they are hereby required, on the day of the elections by them held, in the respective districts, and at the places designated by law for holding such elections, to receive and count out the votes by them taken in; keep a fair statement of the polls, and conduct the elections, in all respects, according to the election law of this State, now in force, 11th February, 1799, so far as said law is now in force.

Duty of Superintendents in holding Elections.

13. SEC. IV. It shall be the duty of one or more of the superintendents of the district elections in the several counties of this State, to meet at the court-house of their respective counties, on the day after the election, and then and there, together with the superintendents of the election held at the court-house, or a majority of them, and count, compare and add together, the returns to them produced by the superintendents of the district elections of the county, and return and certify to the governor, the result of the elections for that county, agreeably to the election law of force in this State, passed the 11th day of Feb., in the year 1799.—[*See act of Dec. 10, 1845; number 41; and see 54.*]

Superintendents to meet and consolidate Election Returns, and certify them to the Governor.

14. SEC. V. All returns of district elections, made by freeholders in their several counties, according to the provisions of this act, shall be signed by them as such.

Freeholders to sign Returns.

15. SEC. VI. When any doubt shall be suggested as to the legality of any vote offered at any election, held in any election district, in any of the counties of this State, it shall be the duty of the superintendents of such election, before receiving such vote, to administer to the person offering it, together with the oath now prescribed by law, the following oath, viz.: "I, A B, do solemnly swear, (or affirm) that I have not this day voted at any election, held at any other place in this State, for governor, members of Congress, electors of President and Vice-President, members of the legislature or county officers—so help me God."—[*See 50.*] And it shall be the duty of the superintendents of such elections, to return to the clerk of the inferior court a list containing the names of all voters who have taken the oath prescribed by this section of this act, which list shall be filed in the office of said clerk.—[*See 50.*]

Oath in doubtful cases. A list of names to be filed with the Clerk of the Inferior Co't, of all who take the Oath.

16. SEC. VII. The duties of sheriff, as pointed out by law, at the district elections in this State, shall be performed by any constable, or any other person appointed by the superintendents; and that said election, shall in all respects, (except those herein recited,) be conducted in the manner, and with the solemnities, and at the places prescribed by the laws now in force in this State, regulating general and county elections.

Constable to act in place of Sheriff. Elections how to be conducted.

17. SEC. VIII. If any person shall vote at more than one place of holding elections in any county of this State, at any election for governor, members of Congress, electors of President and Vice-President, members of the legislature, or county officers; or, if any justice, as aforesaid, or freeholder, presiding at any election, in any of the districts of any county of this State, shall in [*any*] manner, fail to perform the duties herein required of him, or shall violate the trust herein confided to him; such person, justice of the peace or freeholder,

Penalty on Voters or Superintendents misbehaving.



shall be deemed guilty of a high misdemeanor, and upon conviction thereof before the superior court, or any of them, of this State, shall be punished according to an act passed in the year 1799, regulating general elections; and the penalties therein prescribed for the violations of the said law by the magistrates, or superintendents, is hereby extended to persons voting contrary to the provisions of this act.

Compensation of Superintendents in Eastern Circ't 18. SEC. X. The magistrate or freeholder who shall carry the district election returns to the court-house, according to the provisions of this act, shall in all the counties in the Eastern circuit, (except the county of Bulloch,) be allowed the sum of three dollars; to be paid out of the county treasury of the respective counties of said district, as aforesaid.

Hours of opening and closing the polls. 19. SEC. XI. The elections held at the several election districts in this State, shall be open between the hours of seven and ten in the morning, and shall be closed at the hour of six in the evening—[See 40.]

Justices of the Peace to enforce this act. 20. SEC. XII. It shall be the duty of the two justices of the peace, in their respective districts, where precinct or district elections are held, to carry this law into effect.

SEC. XIII. All laws or parts of laws militating against this act are hereby repealed.

AN ACT prescribing the manner of taking Testimony in cases where any person intends contesting the seat of any member returned as elected a Senator or Representative of the Legislature of this State.—*Approved Dec. 24, 1831.*

Contests respecting seats in the Legislature, how to be conducted. 21. SEC. I. When any person hereafter intends to contest the seat of any person returned as elected a member of the house of representatives or of the senate, the person intending to contest or object to the seat of the member or members of the house of representatives or of a senator, who may have been returned as elected, shall give the adverse party five days' notice, in writing, with the name of the witness or witnesses, and the place where he intends to take the testimony, so that he may appear at the time and place, to put cross-questions if he thinks proper. And the person returned as elected, shall where he intends to take testimony, give the other party notice in like manner: *Provided*, nothing herein contained shall be so construed as to prevent either party from attending in person or by attorney.

Testimony within what time to be taken. 22. SEC. II. Where either party intends to take testimony, going to prove the legality or illegality of a vote given to either, or the constitutionality of his qualifications, the same shall be taken in manner aforesaid, and within twenty days after the election, and not after that time.

Notice of intention to contest the seats of members of the Legislature. 23. SEC. III. The person intending to contest the seat of any member, of either branch of the General-Assembly of this State, or object to the same, shall before he proceeds to take any testimony, give five days' notice to the member or members of the house of representatives, or member of the senate, in writing, of his intention of contesting his seat or seats; and the testimony taken in manner aforesaid, shall be taken and acted upon in such manner as either branch of the legislature may deem best calculated to insure justice to the parties.

Not to affect the election laws. 24. SEC. IV. Nothing in this act shall be so construed as to repeal or in anywise destroy the operation of the several laws now in force regulating the election of members to the General-Assembly of this State.

AN ACT to authorize the Citizens of this State, to vote, in certain cases, out of the Counties in which they reside.—*Approved Dec. 21, 1833.*

In what cases voters may 25. In all elections hereafter to be held, for Governor, or Electors of President and Vice-President of the United States; and upon all questions and

subjects whereon the voice of the people of Georgia may be desired to be expressed, it shall and may be lawful for any citizen of this State, who may be entitled to vote for such officers or upon such questions in the county of which he is a resident, to vote for or upon the same, in any county of this State: *Provided*, he shall not have voted elsewhere, for such officer, or upon such question or subject. [*And, in their Districts, for a Member of Congress.* — *Compiler.*]

vote out of  
County of  
their resi-  
dence.

AN ACT to alter and amend the Oath to be administered to Voters at Elections in this State.—*Approved Dec. 22, 1835.*

26. SEC. I. That from and after the passage of this act, the oath required by law to be administered to voters at elections for members of the legislature and other civil officers of this State, shall be as follows: "I, ———, do solemnly swear, (or affirm, as the case may be,) that I have attained to the age of twenty-one years; have paid all legal taxes which have been required of me and which I have had an opportunity of paying, according to law; that I am a citizen of the United States, and have usually resided in this county for the last six months, and have considered it my home or place of residence, during that period—so help me God."

Oath of voters  
at Elections.

27. SEC. II. Where any person applies to vote for Governor, members of Congress, or Electors of President and Vice-President of the United States, out of the county where he resides, and the presiding magistrates shall have doubts as to his right to vote, they shall administer to him the following oath: "I, ———, do solemnly swear, (or affirm, as the case may be,) that I have attained to the age of twenty-one years; am a citizen of the United States, and have usually resided in this State for the last six months, and have considered it my home or place of residence, during that period; and have paid all legal taxes which have been required of me, and which I have had an opportunity to pay, agreeably to law—so help me God."

Out of the  
County of  
their resi-  
dence.

AN ACT to compensate the Superintendents of Precinct Elections, in the County of Troup; and to change the place of holding the Precinct Elections, west of Chattahoochee, from Goss's Store, to the west bank of the Chattahoochee River, at the town of Vernon in said County.—*Approved Dec. 21, 1835.*

28. SEC. IV. Whenever the justices of the inferior court, or the justices of the peace, shall refuse or neglect to organize and carry on the election at the court-house of any county, or at any precinct, according to law, by the hour of ten in the morning of such election-day, that then and in that case, it shall and may be lawful, for any two or more freeholders of the county, to hold said election, and receive all lawful votes tendered; and the votes so received, by the said freeholders, shall be received and counted in making up the result of said election.—[*See 47.*]

Justices fail-  
ing, Free-  
holders may  
hold Elect'ns.

AN ACT to amend an act entitled "an act to prescribe the mode of choosing the Electors of President and Vice-President of the United States, to which this State is entitled by the Constitution of the United States," passed Dec. 18th, 1824.—*Approved Dec. 23, 1843.*

29. SEC. I. *Be it enacted*, That it shall be the duty of the governor, on the 18th day after said election shall have taken place, to make out a consolidated return of the number of persons voting for electors, the names of the persons voted for, and the number of votes received by each, and immediately to notify those persons who may have received a number of votes amounting to a majority of the persons who shall have voted for electors, of their election, and require their attendance at the time and

Votes for  
Electors to be  
counted, and  
the parties  
notified.  
And the Re-  
turns to be  
laid before the  
General-As-  
sembly.



place required by law, to vote for a President and Vice-President of the United States. Said consolidated return when so made out, shall be laid before the General-Assembly, if in session.

Failure to elect, Legislature to be convened, which shall elect.

Majority to fill vacancies.

30. SEC. II. In the event that a majority of the number of electors to which this State may be entitled, at any election for President and Vice-President, shall not have received a majority of the votes polled, as aforesaid, and there being no General-Assembly in session, it shall be the duty of the governor to convene the General-Assembly, which when assembled, shall proceed by joint-ballot to the election of electors for President and Vice-President of the United States. But in the event that at least a majority of the whole number of electors to which this State may be entitled, shall be elected, in manner aforesaid, then and in that case, it shall be the duty of the electors so elected, or a number of them, amounting at least to a majority of the whole number to which this State may be entitled, to fill by ballot, at the time and place appointed by law for the meeting of the electors, any vacancy that may exist in their body, either by non-election of the full number, resignation, failure to attend, refusal to act, or from any other cause whatever.

Majority failing to attend General-Assembly to be convened.

No majority elected, General-Assembly to be convened.

31. SEC. III. In the event that at least a majority of the whole number of electors to which the State may be entitled, at any election, shall be elected in manner aforesaid, and from any cause whatever, a majority of said whole number shall not attend at the time and place appointed by law for casting their votes for President and Vice-President of the United States, to fill vacancies in their body and cast their votes as aforesaid; or, when a majority of said electors shall not be elected, it shall be the duty of his excellency the governor, forthwith to convene the General-Assembly, who shall by joint ballot, proceed to fill any vacancy or vacancies which may have occurred, in any manner whatever, in their body.

AN ACT to lay off and divide the State into eight Congressional Districts; and to point out the mode of electing Members to Congress in each District. And to provide against illegal voting.—*Approved Dec. 23, 1843.*

Congressional Districts laid out.

Residents of each District entitled to vote.

Only residents eligible as candidates and voters.

32. SEC. I. *Be it enacted*, That from and after the passage of this act, the State of Georgia shall be laid off into eight congressional districts, in the following manner—

33. SEC. III. All persons residing in each of the congressional districts aforesaid, entitled under the laws of this State to vote for members to Congress, shall be entitled to vote for one member to represent the district in which he may reside, in the Congress of the United States, and no more.

34. SEC. IV. No person shall be eligible to represent any of the said congressional districts, who does not, at the time of his election, reside within the said district. Nor shall any person be entitled to vote for a member to Congress, in any district other than the one in which he resides.

How and where to hold Elections for members to Congress.

35. SEC. V. All elections for a member to Congress, shall be held at the time prescribed by existing laws, for members to Congress; [see 44;] and shall be held at the places, or election precincts, in each county composing said districts, as are or may hereafter be established by law for holding elections for members to the State legislature, and conducted and returned in the same manner as is now prescribed by law for the election of members to Congress.

Proclamation and Commission of the Governor.

36. SEC. VI. The person having the highest or greatest number of votes in each of their respective districts, shall be declared, by proclamation from the governor, duly elected, and commissioned accordingly, under

the provisions of the laws of this State, touching the election and qualification of members to Congress.

37. SEC. VII. When any vacancy may happen in any or either of said districts, by death, resignation or otherwise, for a member to Congress, such vacancy shall be filled by the persons of the district entitled to a vote, agreeably to the provisions of the ninth section of this act. Vacancy how filled.

38. SEC. IX. Any person who shall vote for a member of Congress, under this act, in any other district than the district in which he may reside at the time of voting, or may be legally entitled to vote, or shall vote more than once in his own district, at the same election, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by fine of not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the court. Illegal voting how punish'd.

39. SEC. X. So much of the act, approved on the 11th day of February, 1799, as provides in the second section thereof, that no certificate or commission shall issue to or for any such person so elected, until satisfactory proof is produced, that the tax of such person has been regularly paid, and that he has actually had the residence therein prescribed, be and it is hereby repealed. Proof of Payment of tax and residence not required.

SEC. XI. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to change the time of closing the Polls at the several Election-Precincts, in the several Counties in this State.—*Approved Dec. 27, 1843.*

40. SEC. I. *Be it enacted*, That from and after the first day of February next, the time of closing the polls at the several election-precincts, in the several counties in this State, be changed from six o'clock, to the hour of five in the afternoon. Any law to the contrary notwithstanding. Time of closing the Polls at Elections.

NOTE.—The time of opening the Polls at Elections, is from *seven to ten* in the morning, and of closing, *five* in the afternoon. Candidates and Superintendents, sometimes, agree and close the polls at an earlier hour than five; this is unlawful. The right of having the Polls continue open until *five* o'clock in the afternoon, *is the right of the voter*, which right the Candidates and Superintendents have no authority to defeat; this they do by closing the Polls at an earlier hour than that designated by law.

AN ACT to compel the Superintendents of Elections held for Governor, Members of Congress, Senators, and Representatives in the State Legislature, to file in the Office of the Clerk of the Superior Court, one List of the Voters at said Elections.—*Approved Dec. 10, 1845.*

41. SEC. I. *Be it enacted*, That hereafter the superintendents of elections held for governor, members of Congress, senators and representatives in the State legislature, shall file in the office of the clerk of the superior court of the county where such elections may be held, one list of all the voters who may have voted at said elections, within the county; which said list shall be kept by said clerk for public inspection.—[*See 52.*] A List of the Voters to be filed in the Clerk's Office.

SEC. II. All laws and parts of laws militating against this [*act*], be and the same are hereby repealed.

AN ACT to apportion the Representatives among the several Counties of this State, according to the seventh section of the first article of the Constitution.—*Approved Dec. 27, 1845.*

42. *Be it enacted*, That until the next apportionment of representatives among the counties of this State, the representation of the several counties shall be as follows, to wit—The counties of Bibb, Burke, Cass, Chatham, Apportionm't of Representatives among the several Counties.



Cherokee, Clarke, Columbia, Cobb, Coweta, De Kalb, Elbert, Franklin, Greene, Gwinnett, Habersham, Harris, Henry, Houston, Jasper, Lumpkin, Merriwether, Monroe, Muscogee, Newton, Oglethorpe, Pike, Putnam, Randolph, Richmond, Stewart, Talbot, Troup, Upson, Walton, Warren, Washington and Wilkes, being the thirty-seven counties having the greatest representative population, shall each have two representatives. And the counties of Appling, Baker, Baldwin, Bryan, Bulloch, Butts, Camden, Campbell, Carroll, Chattooga, Crawford, Dade, Decatur, Dooly, Early, Effingham, Emanuel, Fayette, Floyd, Forsyth, Gilmer, Glynn, Hall, Hancock, Heard, Irwin, Jackson, Jefferson, Jones, Laurens, Lee, Liberty, Lincoln, Lowndes, Macon, Madison, Marion, McIntosh, Montgomery, Morgan, Murray, Paulding, Pulaski, Rabun, Scriven, Sumter, Talliaferro, Tatnall, Telfair, Thomas, Twiggs, Union, Walker, Ware, Wayne and Wilkinson, shall be entitled each to one representative.

AN ACT to alter the time for the Election of Electors of President and Vice-President of the United States.—*Approved Dec. 27, 1845.*

Day of Election of President and Vice-President.

43. *Be it enacted*, That the election of electors of President and Vice-President of the United States, shall hereafter be held on the Tuesday next after the first Monday in November, of the year in which they are to be elected. And that all laws now of force in relation to said election, shall apply to that day, instead of the day heretofore fixed by law.

AN ACT to change the time of holding Elections for Members to represent the people of this State in the Congress of the United States.—*Approved Feb. 6, 1850.*

Congressional Elections when to be held.

44. SEC. I. *Be it enacted*, That from and after the passage of this act, the election for members of the United States Congress, shall be held on the first Monday in October, in the year eighteen hundred and fifty-one, and on the first Monday in October, every two years thereafter. Any law, usage or custom, to the contrary notwithstanding.

If an extra session, Governor to order an Election.

45. SEC. II. In case of an extra session of the Congress of the United [States,] before the first day of November, in any year in which said election is to take place, as provided in the foregoing section, it shall be the duty of his excellency the governor, to issue his proclamation, ordering an election for representatives in Congress, in time for such extra-session, on such a day as he may deem advisable; and the election held on such day, shall be held, conducted, and the proper returns made to the governor, as if the same were held at the regular time fixed by law.

SEC. III. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to abolish, change and establish new Election-Precincts in the Counties herein-after named. And to confer certain powers upon the Inferior Courts. And to authorize three Freeholders to manage and superintend Elections, in certain cases.—*Approved Feb. 11, 1850.*

Election Districts how established.

46. SEC. XIX. The inferior courts of the several counties in this State, shall have power to establish election-precincts in their respective counties, not to exceed one in each militia district, and to change the same upon the recommendation of the grand jury.

Three Freeholders may superintend Elections.

47. SEC. XX. In each election-precinct in this State, it shall be lawful for three freeholders to manage any election which may be held in such district, in case there is no justice of the inferior court or justice of the peace present. And in any such case, either of such freeholders shall be authorized to administer any oath which it is necessary to administer

for the purposes of such election. And the said three freeholders shall certify said election, as in other cases; which shall be as valid as if it had been conducted by a justice of the inferior court or justice of the peace and two freeholders.

48. SEC. XXI. At said election-precincts, there may be held elections for governor, members to Congress, electors of President and Vice-President of the United States, members to the State legislature, and all county officers. Elections thus held, valid.

AN ACT more effectually to prevent fraud in Elections in this State, and to detect and punish the same.—*Approved Jan 27, 1852.*

49. SEC. I. *Be it enacted*, That it shall be the duty of all superintendents or managers of any election, after the first day of May next, held by authority of any law or laws of this State, whether they be freeholders, justices of the inferior court or justices of the peace, to take and subscribe the following oath or affirmation— Oath of Superintendents of Elections.

“All and each of us do solemnly swear, (or affirm,) that we will faithfully superintend this day’s election. That we are freeholders (justices of the inferior court, or justices of the peace) of this County. That we will make a just and true return thereof. That we will not, knowingly, permit any one to vote unless we believe he is entitled to do so, according to the laws of this State; nor, knowingly, prohibit any one from voting who is entitled by law to vote. And we will not divulge for whom any vote was cast, unless called on, under the laws, to do so.” Form of the Oath.

And if there be no justice of the peace, or other officer, authorized to administer oaths; or, if any one be present and shall refuse to qualify the superintendents, it shall be lawful for the superintendents to take and subscribe the oath before each other, and their liabilities shall be the same as though the oath had been taken before an officer authorized to administer oaths. How taken.

50. SEC. II. That it shall be the duty of all superintendents of elections, after the first day of May next, held by authority of any law or laws of this State, in any county thereof, in addition to the copy or list of voters now required to be returned, [see 15,] to cause one list of the names of the voters, who voted at said election at which they presided, to be returned to the clerk of the superior court for said county, within three days after said election, for the use of the grand jury of the county. And it shall be the duty of the managers to have the names of all persons who voted, and whose votes were challenged, plainly and distinctly marked on said list so returned; [see 15;] and said list of voters shall have attached to it a copy of the original oath of managers, signed and certified by them; and on failure to do so, the managers shall be liable to indictment, and upon conviction shall be fined in a sum not less than fifty dollars each, nor more than five hundred dollars each, at the discretion of the court; and moreover, shall be liable to an indictment for false-swearing, and punished according to the existing laws in such cases. List of Voters for Grand Jury.

51. SEC. III. That it shall be the duty of the clerk of the superior court of each county in this State, to deliver said return and list of voters to the grand jury of their respective counties, on the first day of the next term of the superior court for said county, and on failure to do so, he shall be liable to a fine of not less than one hundred dollars. Challenged Ballots to be marked. Oath and Certificate. Failure a misdemeanor, and how punish’d.

52. SEC. IV. That it shall be the duty of the grand jurors of their respective counties, to examine the list of voters so returned, and if there be found on said list any voter or voters who were not entitled to vote, according to the existing laws of this State, to present said illegal voter or voters, for Grand Jury to present fraudulent voters—how they are to be punished.



Punishment  
of delinquent  
clerk.

voting contrary to law; and upon conviction, he or they shall suffer the same pains and penalties as are inflicted by the laws now of force in this State. And in the event that there be no list of voters returned to the grand jury, (in accordance with the provisions of this act,) of any election held according to law, since the last term of the court, it shall be the duty of the grand jury, for their respective counties, to ascertain the delinquent clerk, or the managers, and make presentment of the party in default; and upon conviction, he or they shall suffer the same pains and penalties as are inflicted upon managers of elections by the second section of this act.

Ballots to be  
numbered and  
sealed up, and  
kept for sixty  
days, and  
then burned  
by the Clerk  
of the Su-  
perior Court.

53. SEC. V. That it shall be the duty of managers of elections, at the several places of holding elections in this State, for governor, members of Congress, members of the legislature, clerks of the superior and inferior courts, sheriffs, coroners, county-surveyors, and all other officers elected by the people of this State, (militia officers excepted,) to cause the number annexed to the name of the voter, to be entered upon his ticket, and on counting out the tickets, said managers of the election shall not suffer the tickets to be examined by the by-standers, but shall carefully preserve them, and seal them in a strong envelope and return them to the clerk of the superior court, in each county, to be preserved by him for sixty days; after which time, if there is no contest about, or protest against any such elections, he shall proceed to burn said tickets, without opening or examining the same. Which tickets shall not be subject to examination by any one, unless such election shall be contested.

Contested  
Elections  
how settled.

54. SEC. VI. That should any of the elections, held according to the laws of this State, be contested, it shall be the duty of the clerks of the said superior courts, to deliver the tickets of said contested election or elections, together with the list of voters, to the proper authorities, as now provided by the laws of this State; whose duty it shall be to proceed to purge the polls of said election, by opening said packages of tickets and ascertaining the illegal vote or votes by the numbers on the list of voters and tickets; and the person or persons having the highest number of votes polled within the lawful hours, after deducting such illegal votes, shall be declared elected.

SEC. VII. That all laws and parts of laws militating against this act, be and they are hereby repealed.

AN ACT to amend an act entitled "an act to lay off and divide the State into Eight Congressional Districts. And to point out the mode of electing Members to Congress in each District. And to provide against illegal voting," so far as to re-organize said Districts.—*Approved Jan. 22, 1852.*

First District.

55. SEC. I. *Be it enacted*, That from and after the passage of this act, the counties of Chatham, Effingham, Bryan, Liberty, McIntosh, Tattnall, Bulloch, Emanuel, Montgomery, Lowndes, Telfair, Appling, Glynn, Camden, Wayne, Ware, Laurens, Clinch, Thomas and Irwin, shall compose the first congressional district. [Added Charlton, Coffee, Colquitt, Berrien, Pierce, Brooks, Echolds and Johnston.]

Second Dis-  
trict.

56. SEC. II. The counties of Muscogee, Stewart, Randolph, Early, Decatur, Baker, Lee, Dooly, Sumter, Macon, Pulaski and Marion, shall compose the second congressional district. [Added Calhoun, Chattahoochee, Clay, Dougherty, Webster, Worth, Miller, Terrell, Mitchell, Schley and Quitman].

Third Dis-  
trict.

57. SEC. III. The counties of Harris, Talbot, Upson, Pike, Butts, Munroe, Bibb, Houston, Crawford and Spalding, shall compose the third congressional district.

Fourth Dis-  
trict.

58. SEC. IV. That the counties of Troup, Merriwether, Coweta, Heard, Campbell, Fayette, Henry, De Kalb and Cobb, shall compose the fourth congressional district. [Added Fulton, Carroll and Clayton.]

Fifth Dis-  
trict.

59. SEC. V. That the counties of Dade, Walker, Murray, Gilmer, Chat-

tooga, Floyd, Gordon, Cass, Cherokee, Paulding, and Polk, shall compose the fifth congressional district. [Added Catoosa, Fannin, Pickens, Haralson and Milton.]

60. SEC. VI. That the counties of Union, Lumpkin, Rabun, Habersham, Sixth District. Hall, Forsyth, Gwinnett, Walton, Clarke, Jackson, Madison and Franklin, shall compose the sixth congressional district. [Added Hart, Towns, Dawson, White, Banks.]

61. SEC. VII. That the counties of Newton, Morgan, Greene, Jasper, Putnam, Jones, Baldwin, Hancock, Washington, Wilkinson and Twiggs, shall compose the seventh congressional district. Seventh Dis-  
trict.

62. SEC. VIII. That the counties of Elbert, Oglethorpe, Lincoln, Wilkes, Taliaferro, Warren, Columbia, Richmond, Burke, Jefferson and Scriven, shall compose the eighth congressional district. [Added Glasscock.] Eighth Dis-  
trict.

AN ACT to provide for furnishing the Superintendents of certain Elections, blank Forms for making out their Returns.—*Approved Feb. 8, 1854.*

63. SEC. I. *Be it enacted*, That in all future elections in this State, the returns whereof are required, by law, to be made to the Executive department, or to the General-Assembly, it shall be the duty of the governor to furnish to the clerks of the inferior courts of the several counties, blank forms of all certificates, &c., necessary to said returns. Governor to  
furnish blank  
Forms, etc.

64. SEC. II. That it shall be the duty of said several clerks of the inferior courts, to furnish said blank forms to the magistrates of the districts in their respective counties, in which precincts are established, for the use of the superintendents of said elections. Clerks to fur-  
nish Magis-  
trates.

SEC. III. That all laws or parts of laws militating against this act, be and the same are hereby repealed.

NOTE.—The Penal Code (see Cobb's Penal Code 157) says, "If any person shall hereafter, vote more than once at any Election which may be held in any County of this State, or vote out of the County in which he may usually reside, for Members of the Legislature, or for County officers, such person shall be indicted for a Misdemeanor, and on conviction, shall be punished by imprisonment and labor in the Penitentiary, for any time not less than one year, nor more than two years."

"If any person shall hereafter, buy or sell, or offer to buy or sell a vote; or be concerned in buying or selling a vote; or shall unlawfully vote at any Election which may be held in any County in this State, such person shall be indicted for a Misdemeanor, and on conviction, shall be punished by imprisonment and labor in the Penitentiary, for a term not less than one year, nor more than four years."

"That if any person under the age of twenty-one years, and above the age of fourteen, shall vote illegally at any Election, he shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the common jail of the County, at the discretion of the Court."

### *Oath taken by Superintendents.*

STATE OF GEORGIA, } All, and each of us, do solemnly swear, (or  
Houston County. } affirm,) that we will faithfully superintend this  
day's Election. That we are Freeholders, (Justices of the Inferior  
Court, or Justices of the Peace,) of this County. That we will make  
a just and true Return thereof. That we will not, knowingly, permit  
any one to vote unless we believe he is entitled to do so, according to  
the laws of this State; nor, knowingly, prohibit any one from voting  
who is entitled, by law, to vote. And we will not divulge for whom  
any vote was cast, unless called on, under the laws, to do so.

Sworn to and subscribed,  
before me, this *October 1, 1859.* {  
*James Mack, J. P.* }

JOHN DOE, J. I. C.  
RICHARD ROE, J. P.  
JOHN SMITH, *Free'r.*



NOTE.—The act of 1852, requires that *all* Superintendents of Elections, “whether they be Freeholders, Justices of the Inferior Court, or Justices of the Peace, to take and subscribe” the above oath; the original Oath should accompany the papers required to be filed in the Office of the Clerk of the Superior Court, and copies should go with the Returns, and with the list for the Grand Jury.

The object of the law is to protect the purity of Elections, (which experience shows, it is hard to do;) the Superintendents of Elections, therefore, have a large discretion. When a Voter presents himself, and, if required, takes the usual oath, it is regarded by the Superintendents, that the vote *must* be received; this is a mistake: the oath of the Superintendents is, “we will not, knowingly, permit any one to vote, unless we *believe* he is entitled to do so;” therefore, although a Voter should express a willingness to take the oath or oaths, if the Superintendents have good reason to *believe* that he is not entitled to vote, the vote should be rejected.

“If there be no Justice of the Peace, or other Officer, authorized to administer oaths,” present; “or if any one be present and shall refuse to qualify the Superintendents, it shall be lawful for the Superintendents to take and subscribe the oath before each other;” in this case, it must appear on the affidavit that the Superintendents qualified each other. If a person be called in to relieve a Superintendent, (which is frequently the case,) he must take and subscribe the oath.

### *Common Oath of Voters.*

“I, *John Smith*, do solemnly swear, (or affirm, as the case may be,) that I have attained the age of twenty-one years; have paid all legal taxes which have been required of me, and which I have had an opportunity of paying, according to law; that I am a citizen of the United States, and have usually resided in this County for the last six months, and have considered it my home, or place of residence, during that period—so help me God.” [The tax referred to, is that of the preceding year; see 1st sec. 4th Art. Constitution.]

NOTE.—This Oath may be administered by one of the Superintendents, and should be required of every voter whose vote is challenged, or whose right to vote is questionable. For the qualification of voters, see the first section of the fourth article of the Constitution.

### *Special Oath of Voters.*

“I, *John Smith*, do solemnly swear, (or affirm,) that I have not, this day, voted at any Election, held at any place in this State, for Governor, Members of Congress, Electors of President and Vice-President, Members of the Legislature, or County Officers—so help me God.”

NOTE.—It is the duty of the Superintendents, “when any doubt shall be suggested as to the legality of any vote offered,” to administer the above Oath to the person offering it, together with the Common Oath.

### *Oath on Voting out of his County.*

“I, *John Smith*, do solemnly swear, (or affirm, as the case may be,) that I have attained to the age of twenty-one years; am a citizen of the United States, and have usually resided in this State for the last six months, and have considered it my home, or place of residence, during that period; and have paid all legal taxes which have been required of me, and which I have had an opportunity to pay, agreeably to law—so help me God.”

NOTE.—The above is the form of Oath required of “any person who applies to vote for Governor, Members of Congress, or Electors of President and Vice-President of the United States, out of the County where he resides,” as specified by the statute.

Any person entitled to vote, may vote any where in his District, for a Member of Congress. Any person who shall vote out of his District, or more than once in it, at the same Election, "shall be guilty of a Misdemeanor," and punished by a fine not more than five hundred dollars, nor less than one hundred dollars, at the discretion of the Court.

Any person entitled to vote, may vote at any place in the State, for Governor, and Electors of President and Vice-President of the United States.

### *List of Voters.*

STATE OF GEORGIA, } At an Election, held *this day*, in the Town of  
Houston County. } Perry, in said County, for one Member of the House  
of Representatives of the Congress of the United States, for the third Con-  
gressional District; for one Member of the House of Representatives of the  
General-Assembly of said State, and for a Senator for said County in the  
General-Assembly of said State; the following persons voted, to wit—

- |                          |                        |
|--------------------------|------------------------|
| 1. Thomas Greene,        | 4. John Blue,          |
| 2. William White,        | 5. Richard Black,      |
| 3. Samuel P. Jones, etc. | 6. Hamlin Felder, etc. |

NOTE.—Three Lists of Voters are to be kept by the Superintendents of the Election. Two of these Lists are to be filed in the Clerk's Office of the Superior Court, (together with the ballots;) one list is for public inspection, the other is required to be submitted by the Clerk to the Grand Jury which next convenes after the Election. All the Lists must have attached to them "a copy of the original oath of the Managers, signed and certified by them."

The Grand Jurors are required "to examine the List of Voters so returned, and if there be found on said List any voter or voters who were not entitled to vote," they must be presented by the Grand Jury, "for voting contrary to law."

The ballots, as they are presented and received, must be marked with "the number annexed to the name of the voter," and carefully preserved, (after being counted out,) sealed up and deposited with the Clerk of the Superior Court, who must keep them sixty days; at the expiration of which time, (if not called for,) the Clerk must burn them.

Three Clerks are required to be appointed, who shall keep three rolls; that is, one each; this requirement must be observed at each Election Precinct. One of these rolls is deposited with the Clerk of the Superior Court, and one is to be kept by the Clerk for the Grand Jury, as already stated; one is sent to the Executive Office.

### *Tally-Sheet and Names of the Candidates.*

*For Congress.*—John Thompson—————130 votes.  
James Mathews—————125 "

*For Senate.*—Robert Baskin—————130 "  
James Appleton—————125 "

*For Representative.*—Samuel Black—————135 "  
Charles Smith—————125 "

NOTE.—Three of these Sheets are to be kept; they form a part of the Consolidated Return.

### *Consolidated Return.*

The undersigned, Superintendents of *this day's* Election, at the different Precincts in this (Houston) County, do hereby certify, that they have compared, counted and added together, the Votes polled at each Precinct in said County, agreeably to the Returns made by the Superintendents at said Precincts. That the enclosed contains the names of the persons voting in said Election; the names of the per-



sons voted for, and an accurate statement of the polls, as kept at each of said Precincts.

*For Congress.*—John Thompson received 450 votes.

James Mathews “ 400 “

*For the Senate.*—Robert Baskin received 500 votes.

James Appleton “ 350 “

*For the House of Representatives.*—Samuel Black received 490 votes.

Charles Smith “ 360 “

*Given under our hands and official signatures, October 4, 1859.*

JOHN DOE, J. I. C.	} <i>Super'ts.</i>	RICHARD BROOK, J. I. C.	} <i>Super'ts.</i>
RICHARD ROE, J. P.		SMITH JONES, J. P.	
JOHN SMITH, <i>Free'r.</i>		LEVI WALKER, <i>Free'r.</i>	

NOTE.—A List of the Voters, one of the Tally-Sheets, the Oaths, the Certificate of the Superintendents and the Returns from the Precincts, make up the Return to be made to the Governor; therefore, these papers should so be annexed, by wafers or otherwise, that they should form one piece.

By the Act of 1854, “it shall be the duty of the Governor,” (in all Elections, the Returns whereof are required to be made to the Executive Department, or to the General-Assembly,) “to furnish to the Clerks of the Inferior Courts of the several Counties, blank Forms of all Certificates, &c., necessary to said Returns.” And the Clerks are required to furnish these Forms to the Magistrates of the Districts, for the use of the Superintendents of Elections.

When the packet is properly made up, it should be directed thus—

To his Excellency JOSEPH E. BROWN,  
MILLEDGEVILLE, (Ga.)

### *Credentials.*

STATE OF GEORGIA, } This is to certify and make known, that at an  
Houston County. } Election held in and for said County, on the  
*fourth* instant, for one Member of Congress for the *third* Congressional  
District; a Senator and *one* Representative in the General-Assembly  
of said State, for said County, *Robert Baskin* was duly elected Senator  
and *Samuel Black* was duly elected Representative.

*Given under our hands and official signatures, this October 14, 1859.*

JOHN DOE, J. I. C.	} <i>Super'ts.</i>	RICHARD BROOK, J. I. C.	} <i>Super'ts.</i>
RICHARD ROE, J. P.		SMITH JONES, J. P.	
JOHN SMITH, <i>Free'r.</i>		LEVI WALKER, <i>Free'r.</i>	

NOTE.—If the Senator and Representative, (who must each receive a copy of the above,) do not receive their Credentials from the Superintendents, they will be furnished with them on application at the Executive Department.

## PROCEEDINGS IN CASES OF CONTESTED ELECTIONS UNDER THE ACT OF 1831.

### *Notice of the Contestant.*

STATE OF GEORGIA, } To *Samuel Black, Esq.*—You are hereby noti-  
Houston County. } fied that I shall *contest* your right to a seat in the  
next General-Assembly, as a *Representative* from this County, (to  
which you have been returned as elected,) on the ground of your  
*having received a number of illegal votes, sufficient to change the result of*  
*said Election.* This October 5, 1859.

CHARLES SMITH.

*Taking Testimony.*

STATE OF GEORGIA, } To *Samuel Black, Esq.*—In support of my  
*Houston County.* } *contest* of your Election, I shall proceed, on the  
*twelfth* instant, by *ten* o'clock in the *forenoon*, at *Perry*, in said County,  
 to take the testimony of *Richard Roe*, a voter in said Election. This  
 Notice is given in order that you may attend, at the time and place  
 mentioned, "to put cross-questions to the witness," should you think  
 proper to do so. This *October 5, 1859.*

CHARLES SMITH.

NOTE.—The testimony of the witness must be in writing; therefore, that its applica-  
 tion may not be doubtful, it is best that the questions should be in writing and num-  
 bered.

*Notice to prove the Illegality of a Vote Cast for the Party  
 Returned as Elected.*

STATE OF GEORGIA, } To *Samuel Black, Esq.*—I shall proceed, in due  
*Houston County.* } form of law, on the *twelfth* instant, by *ten* o'clock  
 in the *forenoon*, at *Perry*, in said County, to take the testimony of *John*  
*Doe*, in order to prove that *Richard Roe* cast his vote for you in the  
 recent Election for *Representative* to the next Legislature, and to prove  
 that said *Richard Roe* was not entitled to vote in said Election. This  
 Notice is given in order that you may attend, at the time and place  
 mentioned, "to put cross-questions to the witness," should you think  
 proper to do so. This *October 5, 1859.*

CHARLES SMITH.

NOTE.—This Notice may contain as many names as the party may think proper to in-  
 clude in it, provided they shall all testify to the subject-matter of the Notice given.

If the party returned as elected proposes to examine witnesses in his own favor, he  
 must, in like manner, give Notice to the opposite party.

The proceedings in cases of contested Election must be instituted "within twenty  
 days after the Election, and not after that time."

The *objection* to a party taking a seat may relate to his constitutional or other quali-  
 fications; whatever the *objection* may be, it must be specified in the Notice given.

## PROCEEDINGS IN ELECTIONS FOR GOVERNOR.

*Consolidated Returns.*

STATE OF GEORGIA, } By virtue of the Constitution and the statute in  
*Houston County.* } such case made and provided, an Election was  
 held *this day*, at the several Election Precincts, for Governor of said  
 State. The following is the result of said Election, viz. :

*John Webb* received 500 votes.

*Richard Rash* " 450 "

The undersigned, Superintendents of said Election, do hereby cer-  
 tify that the enclosed and annexed *five* sheets of paper, contain the  
 true and accurate state of the polls at the several Precinct Elections,  
 as returned to and consolidated by us.

*Witness our hands and official signatures, this October 5, 1859.*

JOHN DOE, J. I. C.,	{ Sup'ts.	RICHARD BROOKS, J. I. C.,	{ Sup'ts.
RICHARD ROE, J. P.,		SMITH JONES, J. P.,	
CHARLES SMITH, <i>Free'r.</i> ,		JOHN WALKER, <i>Free'r.</i> ,	



NOTE.—As in cases of other Elections, so in that for Governor, the same formalities must be observed; to wit, a list of the voters, one of the tally-sheets, the oaths, the Certificate of the Superintendents, and the returns from each of the Precinct Elections, make up the return of the Election for Governor.

When the packet is made up, it must be directed thus:

*To the President of the Senate and  
Speaker of the House of Representatives,  
Milledgeville, (Ga.)*

*Care of his Ex'cy Governor Brown.*

NOTE.—The President of the Senate and Speaker of the House of Representatives, in presence of the General Assembly, shall open and publish the Returns; “and the person having the majority of the whole number of votes given in, shall be declared duly elected Governor of this State.”

### *Proclamation by the President of the Senate.*

Know ye—know ye—know ye, that *Joseph E. Brown* having received a majority of the whole number of votes given in at the recent Election for Governor, held in this State, said *Joseph E. Brown* is hereby declared to be duly elected Governor of the State of Georgia for the ensuing two years, and is to be respected and obeyed accordingly.

## CHAPTER XIX.

### LUNATIC, IDIOT, ETC.

AN ACT to organize the Lunatic Asylum of the State of Georgia, and to provide for the government of the same, and to appropriate a sum of money for the same.—*Approved Dec. 10, 1841.*

Clerk to make out certificate. 1. SEC. VIII. In all cases the clerks shall certify in what county the lunatic or epileptic resided at the time of his commitment; and such certificate shall be conclusive evidence of his residence.

Temporary provision to be made where there is no Certificate. 2. SEC. XVI. Whenever there shall be an application for admission to said asylum, without the necessary certificate from the inferior court, of the county where such lunatic or epileptic may have resided, the superintendent shall receive and provide for him or her, until a reasonable time shall have elapsed for the procurement of such certificate: *Provided*, that a sufficient sum shall have been advanced for the maintenance of him or her in the interim.

AN ACT to amend “an act to organize the Lunatic Asylum of the State of Georgia; and to provide for the government of the same; and to appropriate a sum of money for the same, passed December 10th, 1841.—*Approved Dec. 28, 1843.*

Pauper Lunatics, etc., to be supported by the State. Governor to draw on the State. 3. SEC. I. *Be it enacted*, That pauper lunatics, epileptics or idiots, having a residence in this State, shall be supported in the said asylum at the public expense, on certificate of lunacy and poverty, from the justices of the inferior court of the county where such lunatic, idiot or epileptic may have resided. And the governor is hereby authorized, on the application of the trustees of said asylum, to draw from the treasury a sum not exceeding fifty dollars, per annum, for the support of each and every such lunatic.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT [to amend "an act"] to organize the Lunatic Asylum of the State of Georgia; and to provide for the government of the same; and to appropriate a sum of money for the same;" assented to December the 18th, 1841.—*Approved Feb. 21, 1850.*

4. SEC. X. The justices of the inferior courts in the several counties in this State, or a majority of them, agreeably to the provisions herein-after specified, may upon the application of any citizen, commit to the asylum any individual whose lunacy, idiocy or epilepsy is satisfactorily established, (except in the case of idiots, who are not known to be in any way dangerous, and whose friends have the means to provide for them.) And in all cases, when a certificate of pauperism is furnished by the court, such individual shall be supported in the asylum, at the charge of the State; but no individual shall be certified a pauper who is not, in whole or in part, supported by the county in which he or she resides. And in the cases of persons of very limited means, and who cannot be certified paupers, but in relation to whom the certificate of the court is obtained, that their friends are unable to pay the usual charge of board, &c., of pay patients in the institution, the trustees shall be authorized to receive and retain him or her, upon the regular and punctual payment of such portion as it is satisfactorily attested they can pay; any necessary balance being drawn from the fund appropriated for the support of pauper patients, to the amount of the allowance made for the support of each pauper. And on all occasions, when the case of any lunatic, idiot or epileptic, is under consideration before the said justices, it shall be the duty of the clerk of the inferior court to attend such investigation, and keep a book in which all matter relating to the inquiry or trial shall be recorded.

Justices of the  
Inferior Court  
may Commit  
to the Asyl'm.

Pauper Cer-  
tificate.

Partial supp't  
of Patients.

Duty of the  
Clerk.

5. SEC. XI. Any person who may desire the commitment of any lunatic, idiot or epileptic, shall make application, in writing, to the justices of the inferior court of the county where such lunatic, idiot or epileptic resides, for such commitment; whereupon the said justices, or a majority of them, shall appoint a day for the hearing and determining upon such application; and the applicant shall notify the relations, or nearest of kin to such lunatic, idiot or epileptic, resident in the county, of the day set apart, at least ten days before the period thus designated.

Applicat'n for  
Commitment.

Day appoint'd.

Notice must  
be given.

6. SEC. XII. Whenever any application shall be made to the justices of the inferior court, or a majority of them, in any county of the State, for the commitment of any lunatic, idiot or epileptic, to the asylum, they shall issue a warrant to the sheriff, or the deputy of the sheriff, in said county, directing him to summon a jury of seven men, one of whom shall be a regular physician, to be and appear at the court-house in said county, on a day specified in said warrant, to hear and determine the question of lunacy, idiocy or epilepsy. And the justices, or a majority of them, shall preside at such trial, and administer an oath to such jurors, faithfully and impartially to try said issue of lunacy, idiocy or epilepsy; and the verdict of the jury shall be final, on such complaint. And the clerk of the court shall make out a full and fair exemplification from the records, of all proceedings had in the case, to be sent with such lunatic, idiot or epileptic, if committed to the asylum. And the justices of the inferior court shall have the same authority as the inferior court has, by law, to enforce the attendance of jurors and witnesses, and to inflict fines for non-attendance; and to fine, or send to jail, any person who may be disposed to create disorder, or disturb the court, during its session, for the trial of such cases.

Precept for  
Summoning  
Jury.

Justices to  
preside. Oath  
of the Jury,  
and Verdict.  
Clerk to make  
out Exemplifi-  
cation.

Court may  
fine, send to  
Jail, etc.

7. SEC. XIII. In the cases of all citizens of this State, who have been regularly received as patients, in the asylum, but have been absent from it for the period of three months, either through discharge, elopement, or removal by friends, such person cannot be returned to the institution unless regularly re-committed, according to the form prescribed in this act.

New Commit-  
ment after  
three months'  
absence.



Non-resident Patients, how received. 8. SEC. XIV. No lunatic, idiot, or epileptic, not having a residence in this State, shall be received into the asylum, unless satisfactory arrangements shall have been made with the trustees, to provide for and secure the prompt payment of his or her board, and all other expenses liable to be incurred.

Discharge of restored Patients, under what circumstances made. 9. SEC. XV. The trustees, or a majority of them, upon an application to them, in writing, shall discharge from confinement, any lunatic or epileptic, upon being satisfied that the cause of such confinement has ceased to exist. And no pauper lunatic or epileptic, who shall have recovered, shall be discharged from the institution, without suitable clothing, and the trustees may furnish the same at their discretion, together with a sum of money, not exceeding ten dollars.

SEC. XVI. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to permit Lunatics, Idiots and such persons as may have them in charge, to pass free, on the Western and Atlantic Rail-road, on their way to and from the Lunatic Asylum.—*Approved Dec. 21, 1853.*

No charge for Lunatics or Idiots, on Western and Atlantic Railroad, etc. 10. SEC. I. That from and after the passage of this act, it shall be the duty of the superintendent of the Western and Atlantic Rail-road, to pass all lunatics and idiots, and the persons having them in charge, (not more than one to each lunatic or idiot,) free of charge on said road, when sent by the inferior court of any county in this State, to the lunatic asylum. And also, to permit said conductors of lunatics or idiots, to return to their homes, free of charge, over said road.

Same rule as to Deaf, Dumb and Blind. 11. SEC. II. That the same privilege be extended to the deaf and dumb, and blind pupils, when going to and returning from their schools. SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Application for Commitment.*

STATE OF GEORGIA, } *To the Justices of the Inferior Court of said*  
Houston County. } *County.*

The Petition of *John Doe* sheweth, that *Richard Roe*, of said County, is a *Lunatic*, going at large, without a Guardian. Which *Lunatic* Petitioner desires may be committed to the Asylum. This *May 1, 1859.*  
JOHN DOE, *Pet'r.*

### *Notice (to nearest of kin.)*

STATE OF GEORGIA, } *To James Roe, Brother of Richard Roe.*  
Houston County. }

You are hereby notified, that I have made application to the Justices of the Inferior Court of said County, for the purpose of having *Richard Roe*, your *Brother*, a *Lunatic*, committed to the Asylum. The trial of the case will occur at *Perry*, in said County, on the *first* day of *June* next. This *May 1, 1859.*  
JOHN DOE.

NOTE.—A copy of this Notice must be served on the "nearest of kin, to such Lunatic or Epileptic," at least, ten days before the day of trial.

*Precept for Summoning Jury.*

STATE OF GEORGIA, }  
     Houston County. }    *To the Sheriff of said County and his Deputy.*

You are hereby commanded to summon the following named persons to be and appear at *Perry*, in said County, by *ten o'clock* in the forenoon of the *first* day of *June* next, for the purpose of trying, as Jurors, the issue of *Lunacy* of *Richard Roe*, then and there, to be submitted. Herein fail not.

*Witness our hands and official signatures, this May 1, 1859.*

- |                                 |                             |
|---------------------------------|-----------------------------|
| 1. <i>Samuel Felder,</i>        | 5. <i>Rufus Felder,</i>     |
| 2. <i>Marcus Kunze,</i>         | 6. <i>Claiborn Bateman,</i> |
| 3. <i>William Talton,</i>       | 7. <i>Joel W. Mann.</i>     |
| 4. <i>Julius Gilbert, M. D.</i> |                             |

JOHN H. RAGIN, J. I. C.  
 JOHN D. WINN, J. I. C.  
 JOHN SMITH, J. I. C.

*Oath of the Jury.*

You, and each of you, do solemnly swear, that you will, faithfully and impartially, try the issue of *Lunacy*, about to be submitted to you, and a true verdict give, according to evidence—so help you God.

*Issue submitted to the Jury.*

JOHN DOE  
     *vs.*  
 RICHARD ROE. }    *Question of Lunacy.*

And now comes *John Doe*, by his Attorney *John M. Giles*, and says that *Richard Roe*, of said County, is a *Lunatic*, and of this he puts himself upon the country, etc.

JOHN M. GILES, *Att'y pro J. D.*

And *Richard Roe*, by his Attorney *James A. Pringle*, comes and says that said *Richard Roe* is not a *Lunatic*, and doth the like, etc.

JAMES A. PRINGLE, *Att'y pro R. R.*

*Verdict of the Jury.*

We, the Jury, find the Issue in favor of the Plaintiff, that is to say, *Richard Roe* is a *Lunatic*. We further find that said *Richard Roe* is not possessed of any property, nor is he entitled to any.

SAMUEL FELDER, *Foreman.*

*Judgment of the Court.*

Whereupon, it is ordered, considered and adjudged by the Court here, that *Richard Roe*, of said County, is a *Lunatic*; and as such, be committed to the Lunatic Asylum of this State, by the Sheriff, or his Deputy, of this County. And it is further adjudicated, that said *Richard Roe* is a pauper, and entirely unable to pay any portion of



the expense of his keeping, in said Asylum. And it is further ordered, that *Charles H. Heywood*, County Treasurer, pay to the Clerk and Sheriff, the sum of *fifteen* dollars, their costs for attending upon the case. Judgment signed this *May* 1, 1859.

*Certificate of the Clerk.*

STATE OF GEORGIA, } I, *John H. King*, Clerk of the Inferior Court of  
*Houston* County. } said County, hereby certify that the foregoing is a full, true and perfect Exemplification of the proceedings of Record in my Office, in the case of *John Doe* and *Richard Roe*, a pauper Lunatic, of said County, shown on the trial of the issue of *Lunacy*.

*A true extract from the Minutes of said Court, this June 1, 1859.*

[L. S.]

JOHN H. KING, Clerk.

AN ACT for the better management of the persons and Estates of Idiots, Lunatics and persons Insane.—*Approved Dec. 19, 1818.*

Courts of Ordinary to appoint Guardians for Idiots, &c. And may remove them.

11. SEC. I. The inferior courts of said State, sitting as courts of ordinary, shall have full power to appoint guardians for the persons and estates of all idiots, lunatics and persons insane. And it is hereby made the duty of said courts, to require bond and good security from all guardians appointed in pursuance of this act, for the faithful discharge of their duties. And said courts are hereby vested with full power to remove any guardian who shall fail or refuse to manage the person or property of such idiot, lunatic, or person insane, in a proper manner.

Guardian must make Inventory and Appraisal.

12. SEC. II. All guardians appointed by this act, shall be compelled within three months after their appointment, to make an inventory of the estate of their ward, and cause the same to be appraised, as the law directs in cases of deceased persons' estates, and return the same on oath, to said court.

Sales may be made of Idiots, &c. property.

13. SEC. III. When it shall appear to said court that a sale of all, or some part, of the estate of such idiot, lunatic, or insane person, is necessary for their support, or the payment of debts, it shall be the duty of said court to order such sales, and to authorize and compel said guardian or guardians, to make titles to said property.

Wife entitled to Guardianship of Husband.

14. SEC. IV. The wife of such idiot, lunatic, or insane person, (if he be married,) shall be entitled to the guardianship of her husband's person and property: *Provided*, she comply with the requisitions of this act, reserving to said court the right of joining other persons with her in said guardianship, at their discretion.

Annual Returns must be made.

15. SEC. V. All guardians who may be appointed under and by virtue of this act, shall be bound to make to said court, annual returns of their actings and doings, with person and property of their wards.

Wife's Bond valid.

16. SEC. VI. Where a married woman, under this law, shall receive the guardianship of her husband's person, goods and effects, the bond so given by her as guardian, shall be good and valid in law, to all intents and purposes.

SEC. VII. All laws or parts of laws militating against this act, be and the same are hereby repealed.

*Order by the Court.*

If appearing to the Court, on the application of *John Doe*, Guardian, that it is necessary to the support of *Richard Roe*, an Idiot, that a part

of his personal property should be sold: therefore, it is hereby ordered, that *John Doe*, Guardian of said *Idiot*, be allowed to sell a negro fellow named *Jim*, the property of said *Idiot*, after giving notice thereof in one of the public Gazettes of this State, nearest the residence of said *Idiot*, (weekly) for thirty days. Said sale to be at the court-house door of this County.

AN ACT to authorize the Courts of Ordinary of the different counties of this State, to issue Commissions of Lunacy, and to regulate the proceedings thereon.—*Approved Dec. 22, 1834.*

17. From and after the passing of this act, the courts of ordinary of the different counties of this State, shall upon the petition of any person, supported by his or her affidavit, setting forth that any other person is an idiot, lunatic, or insane person, and incapable of managing his or her affairs, issue a commission, directed to any twelve discreet and proper persons, requiring them to examine, by inspection, the person alleged to be an idiot, lunatic, or insane person; and to hear and examine witnesses, upon oath if necessary, as to his or her state of mind; and to make return to the court of ordinary, whether or not the said person be an idiot, lunatic, or insane person. And if the said persons, so appointed, shall return the said person to be an idiot, lunatic, or insane person, the court of ordinary shall appoint a guardian for such person, in terms of the law now of force: *Provided always*, that the commissioners appointed by the court as aforesaid, shall take an oath before they enter upon the discharge of the duty enjoined upon them, before some proper magistrate of this State, or of the State where the examination may take place, "well and truly to execute the said commission, to the best of their skill and ability." *And provided also*, that one of the commissioners acting under the said commission, shall be a physician.—[*See 23.*]

Commissions of Lunacy may issue. How Commissioners must proceed.

Return must be made. Court to appoint Guardian. Commissioners must take an Oath.

Form of Oath.

18. SEC. II. The person applying for said commission shall give at least ten days' notice in writing, of his or her intended application, to the nearest adult relative or relations of the person alleged to be an idiot, lunatic, or insane person, not exceeding three in number, before the court shall issue said commission. But if there be no relative of such person within this State, the court may issue such commission without such notice being given.

Notice of application must be given.

19. SEC. III. In case the person making the application aforesaid, or any relation or friend of the person alleged to be an idiot, lunatic, or insane person, shall be dissatisfied with the report made by the said commissioners, such person may, (upon paying all costs, and giving security for all future costs,) within four days after such report is acted upon by the court of ordinary, enter an appeal to the superior court of the county, where the sanity or insanity of the person shall be tried by a special jury, selected as in other cases. But the guardian appointed by the court of ordinary shall act as such, till the matter is determined in the superior court.

Appeal allowed.

Guardian to act.

20. SEC. IV. If the commissioners shall report the person an idiot, lunatic, or insane person, the costs of the proceeding shall be fixed by the court of ordinary, in their discretion, and shall be paid out of the estate of such person. But if the commissioners report that the person is neither an idiot, lunatic, nor insane person, the costs shall be borne by the person who applied for said commission.

Costs, by whom paid.

SEC. V. All laws and parts of laws militating against this, are hereby repealed.



*Application to the Court.*

STATE OF GEORGIA, }  
     Houston County. }    *To the Court of Ordinary of said County.*

The Petition of *Richard Roe*, sheweth, that *John Doe*, of said County, is an *Idiot*, and incapable of managing his affairs. That said *John Doe* is entitled to a considerable Estate, and has no Guardian: wherefore your Petitioner prays the issuing of a Commission, that the *Idiocy* of said *John Doe* may be examined into. This *May 1*, 1859.

JAMES A. PRINGLE, *Pet'r's Att'y.*

Personally appeared before me, a Justice of the *Peace*, in and for said County, *Richard Roe*, the Petitioner, who being sworn, says, that the facts stated in the foregoing Petition are just and true, to the best of his knowledge and belief.

Sworn to and subscribed,  
 before me, this *May 1*, 1859.  
*James Mack, J. P.*

RICHARD ROE.

*Notice to Relative.*

STATE OF GEORGIA, }  
     Houston County. }    *To William Doe, brother of John Doe, who is*  
                                   } *alleged to be an Idiot. You are hereby notified*  
*that on the first Monday in June next, I shall move the Court of Ord-*  
*inary of said County, for the issuing of a Commission, for the purpose of*  
*inquiring into the Idiocy of said John Doe, for the purpose of having a*  
*Guardian appointed for him. This May 1, 1859.*

RICHARD ROE.

*Order of Court.*

Whereas, application has been made to this Court, by *Richard Roe*, stating that *John Doe*, of said County, is an *Idiot*; that he is entitled to a considerable Estate, and that he has no Guardian: And whereas, it appears that notice of application for the issuing of a Commission to inquire into the *Idiocy* of said *John Doe*, has been given, in terms of the law, and no objections having been made, it is therefore ordered, that a Commission issue in said case.

*Commission.*

STATE OF GEORGIA, }  
     Houston County. }    *By John S. Jobson, Ordinary of said County.*

*To Charles Smith, Justice of the Peace; John Jones, Justice of the Peace; Pill Squills, a Physician; Thomas Willis, William Sims, Shepherd Mims, Samuel Felder, Thomas W. Gurr, Daniel Adams, William Talton, Claiborn Bateman, Hamblin Felder, Alfred King, John R. King and Marcus Kunze, (or any twelve of you.) You are hereby authorized and required to meet in the town of Perry, on the first day of July, next after the date of these presents. And after having taken the oath required by law, to proceed to the personal inspection, (and to hear and examine witnesses upon oath, should you deem it necessary, as to the state of mind,) of John Doe, of said County, who is alleged to be an Idiot. And after having made a thorough and perfect investigation, touching the*

alleged *Idiocy* of said *John Doe*, you are to report to the Court of Ordinary, whether or not the said *John Doe*, is an *Idiot*. Herein fail not.

*Given under my hand and seal, this June 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]

### *Oath of the Jury.*

You, and each of you, do solemnly swear, that you will well and truly execute the Commission to you directed, (touching the *Idiocy* of *John Doe*,) to the best of your skill and ability—so help you God.

### *Return of the Commissioners.*

STATE OF GEORGIA, }  
Houston County. } *To the Ordinary of said County.*

The report of the undersigned, appointed to examine into the alleged *Idiocy* of *John Doe*, of said County, sheweth, that on the *first* day of *July*, eighteen hundred and *fifty-nine*, they caused said *John Doe* to be brought before them, *in the town of Perry*, in said County. That upon the personal inspection of said *John Doe*, and the examination of *Peter Watts* and *Jonas Trice*, as witnesses, the undersigned came to the opinion that said *John Doe* is an *Idiot*. Respectfully submitted, this *first* day of *July*, 1859.

CHARLES SMITH, J. P., *Foreman*. SAMUEL FELDER.

JOHN JONES, J. P.

THOMAS W. GURR.

PILL SQUILLS, M. D.

DANIEL ADAMS.

THOMAS W. WILLIS.

WILLIAM TALTON.

WILLIAM SIMS.

CLAIBORN BATEMAN.

SHEPHERD MIMS.

HAMBLIN FELDER.

### *Second Order by the Court.*

It appearing by the return of the Commissioners appointed to examine into the alleged *Idiocy* of *John Doe*, of said County, that said *John Doe* is an *Idiot*: therefore ordered, that *Richard Roe*, of said County, be and he is hereby appointed Guardian of the *person and property* of said *John Doe*. And it is further ordered, that Letters of Guardianship do issue to said *Richard Roe*, upon his taking the oath and giving the Bond and security, required by law, in such cases.

NOTE.—The subsequent proceedings are the same in this case as they are in ordinary cases, as to Returns, etc.

AN ACT to repeal the fifth section of an act entitled “an act to authorize the Guardians of Minors to receive, recover and remove, from the State of Georgia, property belonging to their Wards, or to which they may be entitled, in cases where such Guardians and Minors both reside without the State. And to prescribe the mode of doing the same; passed the 25th December, 1837. And to extend the said act to the cases of Idiots.—*Approved Dec. 28, 1838.*

21. SEC. I. *Be it enacted*, That the fifth section of the above-recited act, be and the same is hereby repealed. 5th sec. act of 1837, repealed.

22. SEC. II. The benefits, advantages and provisions of the act hereby



Act of 1837 extended to Idiots, &c. amended, and of this act, shall be extended to the guardians of idiots, and lunatics, when the guardian and his ward reside without the limits of this State, on the terms and conditions therein specified.

AN ACT to alter and amend the first section of an act passed the 22d December, 1834, to "authorize the Courts of Ordinary of the different counties of this State, to issue Commissions of Lunacy, and to regulate proceedings thereon," so as to increase the number of persons to whom said Commission shall issue.—*Approved Dec. 29, 1838.*

*Whereas*, said first section directs the issue of a Commission, directed to any twelve discreet and proper persons. *And whereas*, it is often impracticable to procure the attendance of said twelve persons; for remedy whereof—

Number of the Commissioners or Jury. 23. SEC. I. *Be it enacted*, That said commission shall be issued as mentioned in said act, directed to any eighteen discreet and proper persons, requiring them to attend at such time and place as shall be mentioned in said commission, within the county where such commission shall issue; and any twelve of them to examine by inspection, the persons alleged to be an idiot, lunatic, or insane person, and act upon said case as directed in said act.

SEC. II. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT to amend the several acts of this State in relation to suing out Commissions of Lunacy.—*Approved March 5, 1856.*

Several acts amended. 23.\* SEC. I. *Be it enacted &c.* That from and after the passage of this act, the said acts shall be severally amended so as to authorize and require the ordinaries of the several counties in this State, when application is made to them, or either of them for a commission of lunacy, to appoint as two of the commissioners to execute said commission, two justices of the peace, of the county where such case is to be tried, one of whom being present at the trial, may act.

Two Justices of the Peace must be appointed. 24. SEC. II. That said justice or justices being present at the time of trial of said case; and in their absence any other justice of the peace of the county, where such trial is to be had, being present and not being related to the applicant or defendant, nearer than in the ninth degree; and having no interest, either directly or indirectly, in the case to be tried, shall have his name inserted in said commission on motion of either party, as one of said commissioners, to try said cause.

If the Justices named in the Com. be absent, any other Justice may act. 25. SEC. III. That said justice or justices shall then proceed to have the remaining commissioners called and empannelled; shall hear and determine all questions as to their competency. And upon there appearing to be twelve of said commissioners (with himself, or themselves,) present and competent, he shall proceed to swear said commissioners, faithfully and impartially to try and determine said cause.

How Com'rs must proceed. 26. SEC. IV. That said justice may, upon motion made for that purpose, fine any of said commissioners for non-attendance; said fine not to exceed five dollars for each of such commissioners.

Com'r not attending to be fined. 27. SEC. V. That the sheriff of the county, his deputy, or any constable of the county, shall be and is hereby authorized and required, upon being requested by the party making said application, to proceed to summon said commissioners, and shall attend said trial for the purpose of enforcing the orders of said justice or justices and said commissioners.

Sheriff or Constable to attend and enforce the orders of the Commissioners. 28. SEC. VI. That in case enough of said commissioners shall not attend with such justice or justices, then and in that case, the said parties



may agree upon a sufficient number of commissioners to make up the number of twelve, who may proceed to try said case, as herein provided, and is now authorized by law. And in case a sufficient number of said commissioners shall not and cannot be present at the time of said trial, then the said justice or justices, or any number of said commissioners, may adjourn said case to some other day not exceeding five; and may by fine or otherwise, compel the attendance of said absent commissioners. Said trial to be otherwise conducted, as now provided by law.

How the place of absent Com'r supplied.

Case may be adjourned.

29. SEC. VII. That said justice or justices and commissioners, shall hear and determine all questions of law arising on the trial of said case, and all motions to continue.

Questions of law, how determined.

30. SEC. VIII. That the sheriff or constable who may perform the above service, shall be entitled to the same fees as sheriffs and constables are now allowed by law for the like, in summoning jurors and attending trials, in their respective courts.

Fees of ministerial officer.

SEC. IX. [Repeals all conflicting laws.]

AN ACT to amend the laws now in force, in relation to Idiots, Lunatics and Insane persons, and their Estates, and for other purposes.—*Approved March 5, 1856.*

31. SEC. I. That when any person has been found to be an idiot, lunatic, or insane person, agreeably to the provisions of the laws now in force, and guardian shall have been appointed for such person, and such person shall afterwards be restored to his or her right mind, so as to be capable of managing his or her estate, it shall be the duty of the ordinary of the county where such letters of guardianship were granted, upon the application of such person, his or her agent or attorney-at-law, stating that he or she is returned to his or her right mind, and capable of managing his or her estate, to inquire into the truth of such application by evidence, and by conversation with such person, and if the ordinary shall be satisfied that the application is true, and the guardian of such person shall not controvert the truth of the same, it shall be the duty of the ordinary to pass an order vacating said letters of guardianship; and also, an order directing said guardian forthwith, to deliver over to such person, all the property, money or effects in his hands as guardian aforesaid.

Idiot, Lunatic, or Insane Person restored to his proper mind, to have his property returned to him, &c.

32. SEC. II. If upon hearing testimony as aforesaid, (in the previous section,) the ordinary is not satisfied that such person is restored to his or her right mind, and capable of managing his or her estate; or the truth of said application is controverted by the guardian, or any friend of such person, it shall be the duty of the ordinary to issue a mandate, directed to the sheriff of said county, requiring him to summon eighteen men, competent to serve as jurors, to appear before him on a day fixed for that purpose; and any twelve of said men shall be a competent jury to inquire into the truth of said application; and shall be sworn by said ordinary, impartially to so do. And if said jury after hearing evidence, and examining such person, shall by their verdict, find that such application is true, said ordinary shall immediately pass the orders, as is provided in the first section of this act. But if the said jury shall find said application to be untrue, said letters of guardianship shall remain of force.

If the sanity be questioned, how tried.

Jury to be summoned and sworn.

Verdict.

33. SEC. III. When said letters of guardianship shall be revoked, as is herein-before provided, if said guardian shall fail or neglect, for the space of ten days, after being required so to do, to pay and deliver over to such person, all the money, property and effects in his hands as such guardian, agreeably to the last return made by said guardian to said court of ordinary, and affidavit of the truth of the fact shall have been made by such

Proceedings against Guardian where he fails to comply with the Order of Court.



person and filed in the office of the ordinary, it shall be the duty of the ordinary to issue an attachment against such guardian, directed to the sheriff of said county. And it shall be the duty of the sheriff forthwith, to arrest said guardian and commit him to the jail of said county, where he shall remain until he pays and delivers over said money, property and effects, according to the provisions of this act, or until he is otherwise discharged, according to law.

Pay of witnesses.

34. SEC. IV. Said ordinary shall have power to issue *subpoenas* for witnesses, which may be served in the same manner (and they shall be entitled to the same compensation as witnesses in the superior courts, and which may be collected in the same way.) And said ordinary shall have power to administer all oaths that may be necessary for the purpose of carrying this act into full effect.

Pay of Ordinary, Sheriff and Jury.

35. SEC. V. The ordinary shall be entitled to three dollars for his services in each case, when no jury is required; and when a jury is required, he shall be entitled to five dollars. And the sheriff shall be entitled to the same compensation as for like services in the superior courts. And the jury shall be entitled to one dollar each; all of which costs shall be taxed against the party against whom the issue is found. And the ordinary shall issue execution for the same, under the same rules as govern in the superior courts.

Imbecility on accou't of age.

36. SEC. VI. That imbecility on account of age, be one of the grounds upon which a commission of lunacy may issue, so as to authorize the ordinary to grant letters of guardianship on said imbecile person's estate.

SEC. VII. All laws in conflict with this act, are hereby repealed.

### *Notice to Guardians.*

STATE OF GEORGIA, }  
Houston County. }

*To Richard Roe, my Guardian.*

You are hereby notified that I shall apply to the Court of Ordinary of said County, at the next ensuing term thereof, for the purpose of having the Letters of Guardianship issued to you heretofore by said Court, (appointing you my guardian, I having been theretofore, adjudged to be an *insane* person,) cancelled and revoked.  
This *May* 1, 1859.

JOHN DOE.

### *Application of Restored Person.*

STATE OF GEORGIA, }  
Houston County. }

*To John S. Jobson, Esq., Ordinary of said County.*

The Petition of *John Doe*, of said County, sheweth, that your Petitioner, (according to proceedings of record in the Court of Ordinary,) was heretofore declared to be of *Insane* mind, and therefore, incapable of managing his affairs; that Letters of Guardianship, dated the *first* day of *May*, eighteen hundred and *fifty-six*, issued to *Richard Roe*, of said County, as Guardian of your Petitioner's *person and property*; that said *Richard Roe*, by virtue of said Letters of Guardianship, has had the possession of your Petitioner's *person and property*, from the date of said Letters of Guardianship until the present time. And your Petitioner avers that he has recovered from his said *Insanity*, and has become restored to sound mind, so as to be capable of managing his own Estate: wherefore, your Petitioner prays that he may be examined as to his *sanity*, and capability of managing his affairs; that

said Letters of Guardianship, issued to said *Richard Roe*, as aforesaid, may be cancelled and revoked, and that said *Richard Roe*, may be ordered, directed and required forthwith, to deliver over to your Petitioner all the property, money and effects belonging to your Petitioner, (in his hands, as Guardian as aforesaid, to you Petitioner. This *May 1*, 1858.

JAMES A. PRINGLE, *Pet'r's Att'y*.

### *Issue.*

And now at this Term, comes *Richard Roe*, Guardian of the Petitioner *John Doe*, by his Attorney, *John M. Giles*, and controverts the averments in said Petition made, and says, that said *John Doe*, has not recovered from his *Insanity*, but still continues to be of *insane* mind; and that said *John Doe*, is wholly and entirely incapable of managing the affairs of his Estate. All which facts this Defendant prays may be inquired of by the country, &c.

JOHN M. GILES, *Def't's Att'y*.

### *Mandate to the Sheriff.*

STATE OF GEORGIA, }  
Houston County. }

To *Madison Marshall*, Sheriff of said County.

You are hereby commanded and required to summon *James Jones*, *Silas Rawls*, &c., [go on to eighteen in number; men competent to serve as Jurors,] to be and appear before me, in the town of *Perry*, in said County, on the first day of *June* next, by ten o'clock in the forenoon of that day, then and there to be sworn as Jurors to try an issue of *Insanity*, pending between *John Doe* and *Richard Roe*, then and there to be submitted. And this said Jurors, nor either of them, may omit, under the penalty of the law. Herein fail not.

Given under my hand and official signature, this *May 1*, 1859.

JOHN S. JOBSON, *Ordinary*.

NOTE.—Twelve of the Jurors summoned will form the Jury.

### *Oath of the Jury.*

You shall well and truly try the issue of *Insanity*, pending between *John Doe* and *Richard Roe*, now to be submitted to you as a Juror, and a true verdict give, without partiality or favor to either party—so help you God.

### *Verdict of the Jury.*

We, the jury, find the Issue in favor of the *Plaintiff*.

SILAS RAWLS, *Foreman*.

### *First Order of the Court.*

Whereupon it is ordered, considered and adjudged by the Court, that said *John Doe* is sane in mind and capable of managing his affairs. And that the Letters of Guardianship formerly granted to *Richard Roe*, as Guardian of said *John Doe*, be and the same are hereby cancelled and revoked. Judgment signed this *June 1*, 1859.



*Second Order of the Court.*

Whereas, heretofore, to wit, on the *first* day of *July*, in the year of our Lord eighteen hundred and *fifty-six*, Letters of Guardianship (of the *person and property* of *John Doe*, an *insane* person,) were issued to *Richard Roe*. And whereas, said *John Doe* has been restored to his proper mind, and is capable of managing his affairs: therefore, it is hereby ordered that said Letters of Guardianship, issued as aforesaid, be and they are hereby vacated, cancelled, revoked and declared to be null and void.

*Third Order by the Court.*

Whereas, the Jury empannelled for the purpose of trying the issue of *sanity* or *insanity*, formed by *John Doe*, lately an *insane* person, and *Richard Roe*, his Guardian, has been found in favor of said *John Doe*; who, by the verdict of said Jury is declared to be *sane* and capable of managing his affairs: it is therefore, hereby ordered, that said *Richard Roe*, deliver to said *John Doe*, forthwith, all the property, money and effects in his hands, belonging to said *John Doe*.

*Affidavit of John Doe.*

STATE OF GEORGIA, } Personally appeared before the undersigned,  
           Houston County. } *John Doe*, who being duly sworn, deposeth and saith, that he called upon *Richard Roe*, his late Guardian, on the *second* day of *June*, eighteen hundred and *fifty-nine*, and required him, said *Richard Roe*, to deliver over to deponent, all the money, property and effects in his hands, (as Guardian, as aforesaid,) belonging to deponent, and that said *Richard Roe*, then and there, did fully and entirely fail and refuse (and still fails and refuses,) to deliver over said property, or any part thereof, to deponent.

Sworn to and subscribed,  
 before me, this *June* 20, 1859.  
           *James Mack, J. P.*

JOHN DOE.

NOTE.—This Affidavit must be filed in the office of the Ordinary.

*Attachment.*

STATE OF GEORGIA, }  
           Houston County. } To *Madison Marshall*, Sheriff of said County.

Whereas, on the *first* day of *May*, in the year of our Lord eighteen hundred and *fifty-six*, Letters of Guardianship (of the *person and property* of *John Doe*, an *insane* person,) were issued to *Richard Roe*. And whereas said Letters of Guardianship have been cancelled and revoked, and said *Richard Roe*, required to deliver over to said *John Doe*, (who has been restored to his proper mind,) the money, property and effects in his hands, belonging to said *John Doe*. And whereas, it appears by the affidavit of said *John Doe*, filed in my Office, that application for said money, property and effects, has been made to said *Richard Roe*, and that he, said *Richard Roe*, does wholly fail and refuse to deliver over to said *John Doe*, said money, property and effects:

therefore, you are hereby commanded and required forthwith, to attach the body of said *Richard Roe*, and commit him to the Jail of the County aforesaid, where you are to keep him in close and safe custody, until he pays and delivers over said money, property and effects to said *John Doe*, or until he be otherwise discharged according to law. Herein fail not, under the penalty of the law.

*Given under my hand and official signature, this June 20, 1859.*

JOHN S. JOBSON, *Ordinary*.

AN ACT to alter and amend the several acts heretofore passed, for the establishment of the State Lunatic Asylum; designation of Individuals subject to be committed; forms of Commitment, &c. And also, to appropriate money for the completion of improvements in progress at the Asylum; and for other purposes.—*Approved Dec. 21, 1857.*

37. SEC. I. *Be it enacted*, That when, in the opinion of the trustees of the Lunatic Asylum, any inmate has sufficient estate to defray the expenses of said inmate, and the guardian, or administrator, or trustee, or any other person having such estate in hand, and refusing to defray the expenses of said inmate, then, in that case, the trustees are hereby authorized to bring suit in their name for a sufficient amount, from year to year, as will be necessary for the support of said inmate.

Trustees may sue for expenses of Inmate capable of paying them.

38. SEC. II. That in case of insane persons, whose friends purpose paying the usual regular charges for board and all other expenses in the Asylum, the certificate of any three respectable regular physicians, well acquainted with the person alleged to be insane, (or when that is not attainable, such certificate from one regular physician and two other respectable citizens,) shall be regarded sufficient evidence to warrant the reception and detention of such person in the Asylum: *Provided*, that no demand by the person alleged to be a lunatic, or by his or her friend or relative, shall be made for the trial of the question of lunacy, by a jury, as now prescribed by law. But nothing shall be construed to prevent a jury trial when asked or demanded, whether such demand be made by the lunatic or by any relative or friend of his, and whether such demand for a jury-trial, to try the question of lunacy, be made before or at any time after the arrival of such lunatic in the said Asylum.

What deemed sufficient evidence to confine uncommitted Lunatic in the Asylum.

Jury trial may be had.

AN ACT to authorize the arrest and confinement of Lunatic or Insane Persons, in certain cases.—*Approved Dec. 28, 1838.*

39. SEC. I. *Be it enacted*, That upon the application of any of the good people of this State, under oath, that he, she or they, have reason to apprehend any injury to their persons or property, from any lunatic or insane person, who is suffered to go at large, any justice of the peace to whom such application may be made, shall be and he is hereby authorized to issue his warrant in the same way as in criminal cases, for the arrest of said lunatic or insane person, and to bring such person before himself, or any other justice of the peace, who shall proceed to inquire into all the circumstances of the case; and if he should be satisfied that the party making the application, has just grounds to apprehend any injury to himself or his property, from such lunatic or insane person, going at large, to commit such person to the common jail of the county; and shall forthwith, notify the clerk of the inferior court of the county of such committal.

On applicati'n Justice of the Peace may issue Warrant to arrest Lunatic or Insane Person, and to commit him to Jail.

40. SEC. II. It shall be the duty of the clerk of the inferior court of the county, upon being so notified, to call together the judges of said court, or a majority of them, who shall make such provisions for the confinement

Inferior Court to make provision for such Lunatic, etc.



and detention of such lunatic or insane person, either in the common jail of the county, or by placing such person in the custody and under the control of some suitable individual, as they, or a majority of them, may deem best. And such lunatic or insane person, shall be confined, and not permitted to go at large, without being under the immediate custody of such person.

41. SEC. III. When said court, or a majority of them, may be satisfied that such lunatic or insane person, so committed, as aforesaid, is destitute of property, or other means, to defray the expenses thus incurred, for his, her or their maintenance during such confinement, to order the same to be paid out of the county funds. And if said lunatic or insane person shall be able to defray the expenses aforesaid, such expenses shall be ordered to be paid, out of his own funds, in such manner and at such time, as said court shall order.

NOTE.—It is questionable how far the above statute has been superseded by the several statutes establishing the Asylum. Believing, as the compiler does, that the statute has been entirely superseded, and therefore, virtually repealed, he has declined arranging forms under it.

## CHAPTER XX.

### PLANTERS.

AN ACT for the protection, in certain cases, of Planters and Cotton-sellers, within the State of Georgia.—*Approved Feb. 16, 1854.*

1. SEC. I. *Be it enacted*, That from and after the passage of this act, cotton sold by planters and commission-merchants, on cash sale, shall not be considered as the property of the buyer, or the ownership given up, until the same shall be fully paid for, although it may have been delivered into the possession of the buyer. Any law, usage or custom, to the contrary notwithstanding.

2. SEC. II. That any person engaged in the business of buying cotton, either on his own account or for others, who shall buy or engage to buy cotton on sale from a planter or commission-merchant, and shall fail or refuse to pay for the same, and shall make way with, or dispose thereof before he shall have paid for the same, shall be deemed guilty of fraud and embezzlement, and shall be liable, on conviction, to be imprisoned in the penitentiary, not less than one, nor more than five years, at the discretion of the jury trying the case.

AN ACT for the protection, in certain cases, of Planters and Rice-sellers, within the State of Georgia. And for other purposes.—*Approved Dec. 22, 1857.*

3. SEC. I. *Be it enacted*, That from and after the passage of this act, rice sold by planters and commission-merchants, on cash sale, shall not be considered as the property of the buyer, or the ownership given up, until the same shall be fully paid for, although it may have been delivered into the possession of the buyer. Any law, usage or custom, to the contrary notwithstanding.

4. SEC. II. That any person engaged in the business of buying rice, either on his own account, or for others, who shall buy, or engage to buy, rice on sale, from a planter or commission-merchant, and shall fail or refuse to pay for the same, and shall make way with, or dispose thereof before he shall have paid for the same, shall be deemed guilty of fraud and embezzlement, and shall

be liable on conviction, to be imprisoned in the penitentiary, not less than one, nor more than five years, at the discretion of the judge trying the case.

SEC. III. [Repeals conflicting laws.]

before payment, how punished.

AN ACT to alter an act entitled "an act to amend an act to regulate the Weighing of Cotton and other Commodities in this State," approved Feb. 7th, 1854; and for other purposes.—*Approved March 3, 1856.*

5. SEC. I. That from and after the passage of this act, an "act to regulate the weighing of cotton and other commodities in this State," approved February 7th, 1854, shall be altered and amended so as to read as follows—It shall not be lawful for any salesman, or other person, in any of the cities, towns, villages, rail-road stations or depots, in this State, to weigh any bale, bag or package of cotton, tierce or half-tierce of rice, box or barrel of indigo, or any other article of product disposed of by weight, without first taking and subscribing the following oath, before some one of the justices of the inferior court, or justices of the peace, of said county, or any other person authorized by law, to administer an oath: "I, A. B., do solemnly swear (or affirm, as the case may be) that I will justly, impartially and without deduction, weigh all bales, bags or packages of cotton, tierce or half-tierce of rice, boxes or barrels of indigo, and any other article of product disposed of by weight, that may be brought to me for that purpose, without any deduction whatever, and render a true and accurate account thereof, to the parties concerned, if so required—so help me God."

Weighing.

Oath of the Weigher.

5\*. SEC. II. That the weigher shall be allowed to make such deduction for wet, or other cause, notwithstanding said oath, which may be reasonable, when the seller or his agent shall consent to his doing so.

May deduct for wet, etc., by Seller's consent.

SEC. V. [Repeals all conflicting laws.]

AN ACT to prohibit the payment of Storage on Cotton, in this State, by Farmers, after selling from their wagons.—*Approved March 5, 1856.*

Whereas, it has been the custom for years past, for the warehouse-men, and others (in the city of Columbus) to charge and exact of farmers, after they had sold their cotton from their wagons, twenty-five (25) cents per bale, for the first month's storage and delivery—

6. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be unlawful for any warehouse-men, or those employed by them, to charge and exact of farmers, or others, any storage whatever, upon cotton, that has already been sold and disposed of by the farmer, or his agent.

No storage upon Cotton after it is sold.

7. SEC. II. That if any warehouse-men, or others employed by them, violate the provisions of the first section of this act, they shall be guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of twenty dollars per bale for every bale upon which said charge of twenty-five cents, or any other amount, charged after the cotton has been sold, have been charged by the warehouse-men.

Penalty for violating this Act.

8. SEC. III. That when a factor, agent, broker, or commission-merchant, fails to inform his principal, of the sale of any article or articles intrusted to him to sell, within twenty-four hours of such sale, such factor shall be liable, after such sale, to pay his principal the highest market price, between the day of sale and the day when he notified his principal of such sale; and a letter addressed to the principal, deposited in the post-office, containing the notice, shall be a sufficient notice.

Factors must give Notice of sale, Penalty for neglect.

SEC. IV. [Repeals conflicting laws.]

AN ACT to regulate the Weighing of Cotton and other Commodities, in this State.—*Approved Dec. 8, 1806.*

9. Nor shall it be lawful for any person to ask, demand or receive more

Fees for Weighing.



Penalty for than six and a quarter cents for weighing any such bale, bag or package of violating this cotton; tierce, or half-tierce of rice; box or barrel of indigo.  
Act.

10. SEC. III. Each and every person who shall offend against the provisions of this act, shall forfeit and pay, for every such offence, the sum of twenty dollars, for each bale, bag or package of cotton; tierce or half-tierce of rice; box or barrel of indigo; to be recovered in any court having jurisdiction thereof; one moiety thereof to the party injured, or the informer, and the other [*moiety*] to the county.

AN ACT to abolish the allowance of Tare, or Gross Weight, on bales of unmanufactured Cotton.—*Approved Dec. 30, 1847.*

Tare or draft  
on Cotton  
abolished.

11. SEC. I. *Be it enacted*, That from and after the passage of this act, the custom of making a deduction from the actual weight of unmanufactured bales of cotton, as an allowance for tare or draft thereon, be and the same is hereby abolished. And that hereafter all contracts made in relation to such cotton, shall be deemed and taken as referring to the true and actual weight thereof, without deduction for any such tare or draft.

Offender may  
be indicted.

12. SEC. II. Any purchaser or purchasers of cotton in this State, who shall hereafter violate the provisions of this act, shall be subject to indictment in the superior court of the county where the offence was committed, and on conviction thereof, shall be fined in a sum not less than five dollars for each and every bag or bale of cotton, from the actual weight of which such deduction shall have been made, or imprisoned in the county jail, at the discretion of the court, not to exceed sixty days.

#### MARKS AND BRANDS.

AN ACT to revise and amend "an act for recording Marks and Brands in this State.—*Approved Dec. 8, 1792.*

Marks and  
Brands to be  
recorded.

Disputes  
about prop-  
erty, how to  
be settled.

13. SEC. I. From and after the passing of this act, it shall and may be lawful for all persons residing within this State, to record their marks and brands in the clerk's office of the superior court of the county in which such person resides. And if any person or persons shall neglect to record the same, then and in that case, whenever any property shall or may happen to be in dispute between the party so recording his marks and brands and any other person not having recorded as aforesaid, both having one and the same marks or brands, the property being found in the possession of the person complying with this act, the party so claiming any such property in dispute as aforesaid, shall not be allowed to take the same out of the hand of the person found in that possession, without such claimant can prove, by disinterested testimony, such property so in dispute, and that the same is his property; such proof, when the value of the property is under five pounds, to be made before any justice of the peace in the county where such property may be found; and if above that value, before any court having jurisdiction thereof.

Similar Marks  
and Brands,  
how settled.

Need not be  
recorded in  
Clerk's Office.

14. SEC. II. Where two or more persons shall have the same marks and brands, each of them recorded, in such case the oldest record shall be evidence of right, so far as to compel the other party to prove his property by disinterested testimony, in the manner herein-before pointed out: *Provided*, that nothing in this act contained shall compel such person or persons as have already had their brands and marks recorded in the secretary's office, to record the same in the clerk's office aforesaid, but such record in the secretary's office shall be good and valid.

Clerk to re-  
cord Marks  
and Brands;  
his fees.

15. SEC. III. It shall be the duty of the clerks of the superior courts, upon the application of any person or persons, to record all marks and brands, in books to be kept by them for that purpose, and give certificates thereof, when thereunto required, by any person or persons, and for which they shall receive

the fees pointed out by the act to revise and amend "an act for ascertaining the fees of the public officers of this State."—[*See title Fees, and Costs.*]

## FENCES.

AN ACT for the better regulating Fences in the Province of Georgia.—*Approved March 27, 1759.*

*Whereas*, an act passed the 7th day of March, 1755, in the first session of the first General-Assembly of this Province, entitled "an act to regulate Fences in the Province of Georgia," has been found very ineffectual for the purposes thereby intended. *And whereas*, the fixing and establishing fit and proper dimensions for all fences and enclosures to be erected and made in and about the several plantations and settlements of this Province, would not only prevent the several owners and occupiers thereof, so fenced and enclosed, from receiving any damage from the irruption, straying or breaking in of cattle, horses, sheep, goats or swine, but would likewise, obviate any doubts or disputes happening or arising as to the strength and sufficiency of such fences and enclosures, in case of any irruption or trespass, to be committed within the same—

16. SEC. I. *Be it enacted*, That from and after the 29th day of March, 1759, all fences or enclosures, commonly called worm-fences, that shall be erected and made around or about any garden, orchard, rice-ground, indigo field, plantation or settlement in this Province, shall be six feet high when staked and ridged, and from the ground to the height of three feet, of every such fence or enclosure, the rails thereof shall not be more than four inches distant from each other. And that all fences or enclosures that shall consist of paling, shall likewise, be five feet high from the ground, and the pales thereof not more than two inches asunder: *Provided always*, that where any fence or enclosure shall be made with a ditch or trench, the same shall be four feet wide, and in that case, the fence shall be six feet high from the bottom of the ditch.

Lawful Fences and Enclosures, how constructed.

17. SEC. II. If any trespass or damage shall be committed in any garden, orchard, rice-ground, indigo-field, plantation or settlement, not being fenced and enclosed in manner as herein-before is directed, by the irruption, breaking in or straying of any cattle, horses, sheep, goats or swine, the owner of such cattle, horses, sheep, goats or swine, shall not be liable to answer for such trespass, or to make good or satisfy any damage or injury that shall happen or be committed by reason thereof. And in case any person or persons shall kill, maim, hurt or destroy, or cause to be killed, maimed, hurt or destroyed, any cattle, horses, sheep, goats or swine, so trespassing, straying or breaking into any garden, orchard, rice-ground, indigo-field, plantation or settlement, not fenced and enclosed in manner as by this act is directed, all and every such person and persons shall answer and make good to the owner or owners thereof, all such injury and damages as he or they shall sustain thereby; the same to be recovered on due proof thereof, before any two justices of the peace for the district where the offence shall be committed, and to be levied by warrant of distress and sale of the offender's goods.

Owner not liable for Cattle, etc. breaking into enclosures without lawful Fence.

Persons injuring Cattle, etc. liable for damages; how recovered.

18. SEC. VI. *Provided always*, That in all trials to be had before one or more justices of the peace, by virtue of this act, the right of the party to the lands on which the trespass or damage shall be said to be done, shall not be brought into question, but the same shall be taken for granted, to all intents and purposes whatsoever.

Title not questionable, possession sufficient.

SEC. VII. [Repeals the act of 1755.]



## CHAPTER XXI.

## RELIGIOUS WORSHIP, ETC.

AN ACT to protect Religious Societies in the exercise of their Religious Duties.

—*Approved Dec. 13, 1792.*

Violators of  
this Act may  
be taken into  
custody, or be  
arrested by  
warrant.

I. SEC. I. If any person or persons whomsoever, shall interrupt or disturb any congregation of white persons assembled at any Church, Chapel or Meeting-House, or any other place for public worship, during the time of Divine Service, it shall be the duty of any justice of the peace, sheriff, constable or any civil officer of the county, being present where the offence shall be committed, to take the person or persons so offending, into custody; or, on complaint made by any person, on oath, to issue a warrant against him or them so offending.

AN ACT to amend the foregoing.—*Approved Dec. 22, 1808.*

No Liquors to  
be sold within  
one mile of  
Worship.

3. SEC. I. It shall not be lawful for any person to sell, or cause to be sold, any wine, cider, beer, whisky, gin, rum or brandy, or any other intoxicating liquors, within one mile of any meeting-house, or other place set apart, or publicly resorted to for Divine Worship, during the time appropriated to such worship.

Does not ap-  
ply to certain  
retailers.

4. SEC. II. *Provided nevertheless*, that the penalties of this act shall not extend to licensed retailers of liquors, actually residing within the limits herein pointed out.

AN ACT to amend an act entitled “an act to protect Religious Societies in the exercise of their Religious Duties,” approved Dec. 13, 1792; and an act to amend the foregoing act, approved Dec. 22, 1808.—*Approved Dec. 11, 1841.*

Violations of  
these Acts,  
Misdemeanor.

5. SEC. I. *Be it enacted*, That if any free white person shall violate the provisions of the before-recited acts, it shall be deemed and held, in law, a misdemeanor, and shall be indictable in the superior courts of this State, as in other criminal cases. [*See 18.*] And it shall be the duty of the justices of the peace, to bind the offenders, to be and appear at the superior courts of this State, as in other criminal cases.

Penalty from  
ten to fifty  
dollars.

6. SEC. II. If any free white person shall be convicted for a violation of the aforesaid acts, he shall be fined in a sum not exceeding fifty dollars, nor less than ten dollars.—[*See 8.*]

AN ACT to amend an act entitled “an act to protect Religious Societies in the exercise of their Religious Duties,” approved December 13, 1792.—*Approved Jan. 19, 1852.*

Disturbing Re-  
ligious Wor-  
ship a Misde-  
meanor.

7. SEC. I. *Be it enacted*, That if any free white person shall violate the provisions of the before-recited act, it shall be deemed and held in law a misdemeanor, and shall be indictable in the inferior [*superior*] courts of this State, as in other criminal cases. And it shall be the duty of the justices of

the peace of this State, upon sufficient proof being made before them of a violation of the provisions of the aforesaid act, to bind the offender or offenders to be and appear at the superior courts of this State, by recognizance, as in other criminal cases.—[See 18.]

8. SEC. II. If any free white person shall be convicted for a violation of the aforesaid acts, he or she shall be fined in a sum not exceeding fifty dollars, nor less than ten dollars: *Provided*, that if the offenders are unable to pay such fine, they shall be imprisoned in the common jail of the county, not more than sixty days, nor less than five days, at the discretion of the court.—[See 6 and 18.]

Punishment  
what, and how  
inflicted.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Affidavit against a Disturber of Public Worship.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } a Justice of the Peace in and for said County,  
*John Doe*, who being duly sworn saith, that on the *thirtieth day of April last past*, at the *Methodist Episcopal Camp-Ground*, in the County aforesaid, [during the time of Divine Service at said *Camp-Ground*,] *Richard Roe*, of said County, committed the crime of Misdemeanor, by interrupting and greatly disturbing the Service, then and there being performed, by *loudly and boisterously cursing and swearing*, and using other means, then and there, of disturbance, to the annoyance of the congregation of persons, then and there worshipping.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }

JOHN DOE.

*James Mack, J. P.*

### *Warrant under the above Affidavit.*

STATE OF GEORGIA, } To *John Jacobs, Constable*, and to all other lawful  
Houston County. } officers, to execute and return.

Whereas, the undersigned has *this day* been informed, upon the oath of *John Doe*, that on the *thirtieth day of April, last past*, at the *Methodist Episcopal Camp-Ground*, in the County aforesaid, [during the time of Divine Service at said *Camp-Ground*,] *Richard Roe*, of said County, committed the crime of Misdemeanor, by interrupting and greatly disturbing the Service, then and there being performed, by *loudly and boisterously cursing and swearing*, and using other means, then and there of disturbance; to the annoyance of the congregation of persons, then and there worshipping. These are, therefore, to authorize and command you, and each of you in the name of the said State, immediately on sight hereof, to arrest the person of the said *Richard Roe*, and bring him before me, or some other Justice of the Peace for said County, that he may be dealt with as the law directs. Herein fail not.

*Witness my hand and seal, this May 1*, 1859.

JAMES MACK, J. P. [L. S.]

NOTE.—When the accused person is arrested and brought before the Justice, he must proceed, in the usual way, to ascertain the truth of the accusation; if the charge be made out to the satisfaction of the Justice, the offender must be bound over to appear at the next Superior Court.



*Bond given by the Defendant.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *John Smith*  
*Houston County.* } as security, both of the State and County afore-  
 said, hereby acknowledge ourselves held and bound to his Excellency  
*Joseph E. Brown*, Governor of said State, for the time being, and his  
 successors in office, in the sum of *five hundred* dollars; subject to the  
 following condition—

The condition of the above obligation is as follows—whereas, on the  
*first day of May instant*, said *Richard Roe* was arrested by virtue of a  
 Warrant issued on the *same day*, charging said *Richard Roe* with the  
 crime of Misdemeanor, committed in said County, on the *thirtieth day of*  
*April, last past*, by disturbing, (during the time of Divine Service,) the  
 congregation of persons, then and there worshipping, at the *Methodist*  
*Episcopal Camp-Ground*, in said County, then and there. Now, should  
 said *Richard Roe*, well and truly be and appear at the next Superior  
 Court to be held in said County, to answer to said charge and abide the  
 proceedings of said Court, in the premises, then this obligation to be  
 void, otherwise of force. This *May 1, 1859*.

Attest—

*James Mack, J. P.*

RICHARD ROE. [L. S.]

JOHN SMITH. [L. S.]

NOTE.—In default of Bail, the accused must be Committed.

*Commitment.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the Peace  
*Houston County.* } in and for said County; to *John Jacobs*, one of the  
 Constables of said County; and to the Keeper of the common Jail, of  
 said County.

Whereas, on the *first day of May, instant*, information, on oath, made  
 before me, charged that *Richard Roe*, of said County, did, on the  
*thirtieth day of April, last past*, at the *Methodist Episcopal Camp-Ground*,  
 in said County, commit the offence of Misdemeanor, by interrupting  
 and greatly disturbing the Service, then and there being performed,  
 by *loudly and boisterously cursing and swearing*, and using other means  
 of disturbance, to the annoyance of the congregation of persons, then  
 and there worshipping; upon which information a Warrant was issued  
 for the apprehension of said *Richard Roe*, on the *same day and year*  
 of the information given; upon the return of which Warrant, and  
 examination of the witnesses, the said charge against the said *Richard*  
*Roe* was fully sustained; whereupon, said *Richard Roe* was required  
 to give Bond and Security, in the sum of *five hundred* dollars, for his  
 personal appearance at the next Superior Court to be held in and for  
 the County aforesaid, which said *Richard Roe* failed and refused to do;  
 whereupon, the undersigned proceeded, according to the statute in  
 such case made and provided, to order, and does hereby order, that  
 the said *Richard Roe* be, and he is hereby committed to the Jail of  
 said County, there to be kept in close and safe custody; therefore,  
 you, the said Constable, are hereby commanded to deliver the body  
 of him, the said *Richard Roe*, to him, the said Jailer; and you, the  
 said Jailer, into the said Jail, are hereby required and commanded

him, the said *Richard Roe*, to receive and keep in close custody, until he shall be delivered therefrom, by due course of law.

*Witness my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

#### DEED FOR CHURCH LOT.

AN ACT to secure to Churches or Religious Societies, the Lots of Land conveyed to them for erecting Churches and Meeting-Houses.—*Approved Dec. 3, 1805.*

9. SEC. I. All deeds of conveyance heretofore made, and which may hereafter be made by any person or persons, for any lots of land within this State, to any church or religious society, or to trustees for the use of any church or religious society, for the purpose of erecting churches or meeting-houses, are and shall be deemed and taken to be good and valid, and available in law, for the intents, uses and purposes contained in such deeds of conveyance. And all lots of land so conveyed shall be fully and absolutely vested in such church or religious society, or in their respective trustees, for the uses and purposes in the said deed expressed, to be holden to them or their trustees for their use, by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies, respectively.

Conveyances to Churches, etc., valid.

10. SEC. II. All trustees to whom conveyances are or shall be made, for the purposes herein-before expressed, shall be subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from the said trust by such church or society, according to the form of government or rules of discipline by which they may be governed. And every church or religious society, shall be and they are hereby authorized and empowered to fill up all vacancies which may happen in the said trusts, by death, removal, expulsion or otherwise. And when any vacancy shall be filled up, the same shall be certified under the hand or hands of the person or persons presiding in the said society, and according to the form of government or discipline practised by the said church or society; which certificate shall express the name of the person appointed to fill the vacancy, and the name of the person in whose place he shall be appointed; and the said certificate being recorded in the office of the clerk of the superior court of the county in which the land lies, the person so appointed to fill such vacancy, shall be as fully vested with such trust, as if a party to and named in the original deed.

Trustees subject to Church authority; may be expelled and vacancies filled.

Vacancy, and filling the same, how certified. Names to be expressed, and certificate recorded; where recorded; effect.

#### *Form of the Deed.*

STATE OF GEORGIA, } This Indenture, made and entered into this *first*  
*Houston County.* } day of *January*, in the year of our Lord eighteen hundred and *fifty-nine*, between *John Doe*, of said County and State, of the one part, and *Richard Roe, John Smith, and James Jones*, Trustees of the *Methodist Episcopal Church*, of said County and State, of the other part, witnesseth—that the said *John Doe*, for and in consideration of the sum of *one hundred* dollars, cash in hand paid by the said Trustees, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth by these presents, bargain, sell and convey to the said Trustees, for the use and benefit of the said *Methodist Episcopal Church*, the following lot of land, to wit: lot number *seven* in the town of *Perry*, in said County, containing *half an acre*; with all the rights, members and appurtenances to said lot of land in anywise appertaining and belonging.



To have and to hold the said bargained premises to the Trustees aforesaid, and their successors in office, for the use and benefit of the said *Methodist Episcopal Church, forever in fee-simple.*

In witness whereof the said *John Doe* hath hereunto set his hand and affixed his seal, the day and year first above written.

Signed, sealed and delivered,  
in presence of  
*Jacob West.*  
*James Mack, J. P.*

JOHN DOE. [L. S.]

AN ACT to exempt from taxation the lots or parcels of land on which the Churches of the different Denominations in this State, are situated.—*Approved Dec. 23, 1833.*

Church lots  
and Burying  
Grounds ex-  
empt from  
taxation.

11. SEC. I. From and after the passage of this act, the lots or parcels of land on which the churches of the different denominations in this State, and the burying grounds attached thereto are situated, shall not be subject to be taxed: *Provided*, the lots or parcels [*of land*] so claimed by said churches, shall not exceed five acres.

SEC. II. [Repeals all conflicting laws.]

#### VICE ; IMMORALITY, ETC.

AN ACT for preventing and punishing Vice, Profaneness and Immorality, and for keeping holy the Lord's Day, commonly called Sunday.—*Approved March 4, 1762.*

*Whereas*, there is nothing more acceptable to God than the true and sincere worship and service of Him, according to His holy will ; and that the keeping holy the Lord's Day is a principal part of the true service of God, which in this Province is too much neglected by many—

Persons not to  
work on Sun-  
day.

12. SEC. II. No tradesman, artificer, workman, laborer or other person, whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings, upon the Lord's Day, or any part thereof, (works of necessity or charity, only excepted.) And that every person, being of the age of fifteen years or upwards, offending in the premises, shall for every such offence, forfeit the sum of ten shillings. And that no person or persons whatsoever, shall publicly cry, show-forth or expose to sale, any wares, merchandises, fruit, herbs, goods or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed-forth, or exposed to sale, or pay ten shillings.

Goods not to  
be exposed to  
sale on Lord's  
Day.

All games and  
sports forbid-  
den on Lord's  
Day.

13. SEC. IV. No public sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse-racing, shooting, hunting or fishing, interludes or common plays, or other games, exercises, sports or pastimes whatsoever, shall be used on the Lord's Day, by any person or persons whatsoever. And that all and every person and persons offending in any of the premises, shall forfeit for every such offence, the sum of five shillings sterling.

Loungers not  
to be allowed  
to frequent  
public houses  
on the Lord's  
Day.

14. SEC. V. No vintner, inn-holder, or other person keeping any public house of entertainment, shall entertain or suffer any person or persons, (except strangers or lodgers,) in such houses or out-houses, to abide or remain ; nor shall they suffer any person or persons whatsoever, in their said houses or out-houses, yards, orchards or fields, to abide or remain, drinking or in any manner idly spending their time on the Lord's Day, upon the pains and penalties of five shillings for every person offending, (payable by themselves, respectively,) that shall be found so drinking or abiding in any such public house or dependencies thereof, as aforesaid ; and the like sum of five shillings, to be paid by the keeper of such house, for every person entertained by them.

—[*See Cobb's Penal Code, p. 152 ; number 218.*]



15. SEC. VI. And for the better keeping of good order on the Lord's Day, *Be it enacted*, That the church-wardens and constables of each parish, respectively, or any one or more of them, shall once in the forenoon and once in the afternoon, in the time of Divine Service, walk through the town of Savannah, and the respective towns of this Province; to observe, suppress and apprehend all offenders whatsoever, contrary to the true intent and meaning of this act. And they shall have power, and are hereby authorized and empowered, to enter into any public house, or tippling-house, to search for any such offenders; and in case they are denied entrance, shall have power, and are hereby authorized and empowered, to break open, or cause to be broke open, any of the doors of said house, and enter therein; and all persons whatsoever are strictly commanded and required to be aiding and assisting to any constables or other officers, in their execution of this act, on the penalty of ten shillings sterling, for every refusal.

Officers must pass through towns for the purpose of keeping order.

Officers may enter tippling-houses, etc. by force, if necessary. All persons must assist them.

16. SEC. VIII. No person or persons, upon the Lord's Day, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree, except in cases of treason, felony or breach of the peace; [*Attachments and Bail Process may be served on the Sabbath, under special affidavit—see those titles;*] but that the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever. And the person or persons so serving or executing the same, shall be liable to the suit of the party grieved and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree at all. And in case any person or persons shall be imprisoned or detained in custody, by any writ, process, warrant, order, judgment or decree, so served or executed upon the Lord's Day, upon motion or petition made to the chief-justice, or any one of the assistant justices, for the time being, it shall be lawful for the chief-justice, or assistant justice or justices, and he or they are hereby authorized and required, immediately to order such person or persons to be discharged out of prison and custody, and to be clear, not only from such writ, process, warrant, order, judgment or decree, so served on the Lord's Day, but also from all and every other writs, process, warrant, order, judgment or decree, served or executed upon any person during the time of the said person's being imprisoned or detained, upon the account of any such writ, process, warrant, order, judgment or decree, so served or executed on the Lord's Day. And such person shall be allowed by the said chief-justice or assistant justices, such reasonable time as he or they shall think fitting to return to his home or habitation, free from any arrest or hinderance whatsoever, in civil matters.

Civil process served on Lord's Day, void.

Officer liable for damages.

Persons arrested on Lord's Day, in civil cases, must be immediately discharged. And all other persons arrested on account of such process must be, also, discharged.

17. SEC. IX. If any action, suit or information, shall be commenced against any person or persons for what he or they shall do in pursuance or execution of this act, such person or persons so sued may plead the general issue, not guilty, and upon issue joined, give this act and the special matter in evidence. And if the plaintiff or prosecutor shall become non-suit, or suffer discontinuance, or if a verdict pass against him, the defendant or defendants shall recover his or their treble costs; for which he or they shall have the like remedy as in any case where costs, by law, are given to the defendant.

How officers prosecuted for enforcing this may defend themselves.

AN ACT to protect Religious Societies in the exercises of their Religious Duties, and for other purposes.—*Approved, Dec. 11, 1858.*

18. SEC. I. That from and after the passage of this act, if any person or persons whomsoever, shall interrupt, or in any manner disturb any congregation of white persons, assembled for Divine Service; either by cursing, or using profane or obscene language, or being intoxicated, shall be guilty of a misdemeanor, and on conviction of the same, shall be fined in a sum not exceeding fifty dollars, (\$50,) or imprisoned, at the discretion of the court.

Cursing, using profane language, or being intoxicated, how punished.



## CHAPTER XXII.

## ROADS, BRIDGES, FERRIES, RIVERS.

AN ACT to empower the Inferior Courts of the several counties in this State, to order the laying out of Public Roads, and to order the building and keeping in repair of Public Bridges.—*Approved Dec. 4, 1799.*

Which are Public Roads. 1. SEC. I. All the roads in the several counties of this State, that have been laid out by virtue of any act of the General-Assembly, or by virtue of any order of court, are hereby declared to be public roads. And that Inferior Court may lay out new Roads, and discontinue old and useless ones. from time to time, and at all times hereafter, the inferior courts of the several counties in this State, shall have full power and authority, to order the laying out of public roads where the same may be necessary, and to discontinue such roads as now are, or shall hereafter, be made, as shall be found useless; and to alter the roads so as to make them more useful and convenient, as often as occasion shall require.

Persons aggrieved by Roads through their grounds, how redressed. 2. SEC. II. And when any person or persons shall feel him, her or themselves, aggrieved by reason of any road being laid out through his, her or their inclosed ground, [*see 66,*] it shall be the duty of any two or more of the justices of the inferior courts, on application in writing, by the person or persons injured, to issue a warrant under their hands, directed to the sheriff of the county, to summon a jury of freeholders, who shall be sworn to assess such damages. And that the sheriff shall make and return a true inquisition thereof to the next inferior court. And it shall be the duty of such court, to order the amount of damages so assessed, to be paid out of the next county-tax, or out of any public moneys belonging to the county fund: *Provided nevertheless*, that where it shall appear to the inferior court that the damages so assessed, transcend the utility of that part of the said road, such court shall order the same to be altered in such manner as to avoid the enclosed ground so damaged, unless the person complaining shall agree to accept such compensation as shall be deemed just and reasonable by such court.

Excessive damages how avoided.

Condition of Roads.

Condition of Bridges and Causeways.

Punishment and liability of delinquent Overseer.

3. SEC. III. All public roads laid out or now in use, or which shall be hereafter laid out, shall be cleared of all trees, stumps, grubs and brush; at least, twenty feet wide; and such limbs of trees as may incommode horsemen or carriages, shall be cut away. All bridges or causeways, made or to be made over small water-courses, and causeways over swamps or low lands, shall be made and kept in repair by the hands subject to work on the roads where the same may be necessary; and the pieces wherewith the same shall be made, shall be laid across the road, and be at least sixteen feet long, well secured, made fast and covered with earth.— [*See 7 and 21.*]

4. SEC. V. All overseers of roads who shall refuse or neglect to do their duty, as is directed by this act; or shall not keep the roads and bridges over small water-courses, and causeways over swamps and low lands in repair; or let them remain uncleared, or out of repair, for and during the space of thirty days, unless hindered by extreme bad weather,



such overseer shall [*be liable to a fine which is superseded by the act of 1818—see 19,*] and shall, nevertheless, be subject to an action for damages, at the suit of any person injured by such refusal or neglect.

5. SEC. VI. All the bridges that have been erected by any act of the General-Assembly, or by virtue of any order of court (not being private toll-bridges,) are hereby declared to be public bridges. And that, from time to time hereafter, the inferior courts of the several counties shall have full power and authority to appoint the places for erecting public bridges: [*Proviso as to letting out bridges by commissioners, repealed by act of 1845; see 62,*] and the inferior court shall levy the amount thereof on the county, or order the same to be paid out of any of the funds of the county, subject to their disposal.—[*See 24.*]

Which are  
Public  
Bridges.  
New ones  
may be erect-  
ed. How  
paid for.

AN ACT to alter and amend the foregoing.—*Approved Dec. 1, 1800.*

6. SEC. III. The inferior courts of the respective counties within this State, are hereby authorized and empowered to direct the manner and mode of keeping in repair all cross and other roads, not being an immediate or direct market road, leading through their respective counties, in such manner as they, in their judgment, may think most proper.

Cross-roads  
how kept up.

7. SEC. IV. So much of the before-recited act, [*act of 1799,*] directing the overseers of districts to remove all stumps and trees, shall be construed so as to remove such stumps and trees from being obstructions to wheel-carriages; by cutting the same as nearly even with the surface as possible.—[*See 3.*]

How stumps  
and trees are  
to be cut.

AN ACT authorizing the Inferior Courts in each county within this State, to establish Ferries and Bridges, and such rates for crossing thereat, as to them may appear reasonable. And to authorize the erection of a Toll-Bridge on Canouchee, in Liberty county.—*Approved Dec. 6, 1805.*

8. SEC. I. The inferior courts in the several counties in this State, are hereby empowered, if they should deem it necessary, on application being made, to authorize the establishment of such ferries or bridges, as they may think necessary, other than where ferries and bridges have already been established by law, and to allow such rates for crossing thereat as are usual or customary on water courses of the same width: *Provided nevertheless*, that the legislature shall, at all times, retain the power of making such alterations in the establishments made by the justices of the inferior courts, as to them may seem proper.—[*See 12.*]

Inferior  
Courts may  
establish Fer-  
ries and Toll  
Bridges.

Reserved  
power in the  
Legislature.

9. SEC. II. It shall be the duty of any person who may obtain such establishment, order, or leave, to keep a good and sufficient ferry-flat or bridge, and to give due attendance thereat. And if any damage shall happen to any person or persons by reason of the insufficiency of such flat or bridge, the non-attendance or neglect of the ferryman or keeper of such bridge, the person so aggrieved or damaged, shall and may have and maintain an action against the owner of such ferry or bridge.

Liability of  
owner for  
neglect, or in-  
sufficiency of  
Flat or Bridge

10. SEC. III. Any two of the justices of the district in the county where such ferry or bridge may be established, on complaint to him or them, by any person, that he or she has sustained damages by reason of non-attendance, neglect, or insufficiency of the flat or bridge, to an amount not exceeding thirty dollars, (which information shall be made on oath,) shall cause the owner of such ferry or bridge, to appear at the next justices' court of the district where such ferry or bridge may be, to answer the plaintiff's complaint, which shall be fully set forth in the warrant; and also, the day on which such injury took place. And the justices before whom the same may be tried, shall cause five disinterested persons to be

Damages un-  
der thirty dol-  
lars may be  
tried before  
Justices of  
the District  
and a Jury of  
five men.



Damages over thirty dollars, to be tried in the Superior or Inferior Courts. impannelled and sworn as jurors, to whom such case shall be submitted, and their verdict shall be the judgment of the court; and such proceedings shall be had thereon, as in other cases: *Provided*, that when any person considers himself aggrieved, or hath sustained damages to an amount exceeding thirty dollars, he, she or they, so considering themselves aggrieved or damaged, may have and maintain in the superior or inferior court of the county, an action against the owner of such ferry or bridge, and shall recover thereon the amount which the jury trying the cause, may assess.

No Ferry where there is a public Bridge. 11. SEC. V. No ferry shall be established on any stream or water-course, over which bridges are now erected at the expense of any county or counties: *Provided*, nothing herein contained shall extend, or be construed to extend, to prevent the erection of bridges at public expense, at places other than those where bridges are now established.—[See 44.]

AN ACT to regulate Toll-Bridges, Ferries, and Turnpike-Roads.—*Approved Dec. 22, 1808.*

Rates of Toll must be set up on a sign-board. 12. From and after the first day of January, 1809, it shall be the duty of every and all proprietors of toll-bridges, ferries and turnpike-roads, to fix a board in a conspicuous situation, on each bridge, turnpike-gate, or landing place, held by him or them; the board to be painted black, with white legible characters, written on the same, noting the different rates of toll or ferriage, as the case may be, allowed by law. In case of any proprietor or proprietors neglecting so to do, he or they shall not be entitled to the toll or ferriage accruing from such bridge, ferry or turnpike-road.—[See 8.]

AN ACT to consolidate the Militia Laws of this State, and to repeal the Cavalry Laws now in force.—*Approved Dec. 19, 1818.*

Those attending musters, etc. pass toll free. 13. SEC. XXXVII. All officers whilst on duty, and any militia, called to musters or parades, or to courts-martial, or to courts-of-inquiry, having to pass over toll-bridges, ferries, or through turnpike-gates, shall pass toll free, going to and returning from such musters, parades or courts as aforesaid.

AN ACT to alter and amend the Road Laws of this State.—*Approved Dec. 19, 1818.*

Inferior Court to lay out Road Dist'cts. 14. SEC. I. The justices of the inferior courts in and for the several counties in this State, at the first session or term after the passing of this act, or as soon thereafter as convenient, shall proceed to define and point out as many and such districts as to them shall seem meet and proper, having due regard to proportioning said districts or divisions so as to divide the labor and expense of the roads, causeways and bridges, equally among the citizens and hands of the respective districts throughout the said counties. And on application to said court for any new road, or any alteration in an old road, the said justices shall proceed to appoint three discreet and proper persons, residing in the neighborhood where such road is intended to pass; and in case they find it of public utility, they may proceed to mark out the same, (on oath taken before any justice,) and report to the said court, the clerk of which is hereby required to notify

New Roads how laid out, and how alterations made in old Roads. Commission'rs to be appointed, their power to administer oaths. How notified the commissioners herein-after named, of such report. And the justices of said inferior courts shall appoint two or more commissioners, one of whom shall be a justice of the peace; (and in case of death, resignation or removal of the justice, the other two commissioners are hereby authorized to administer oaths, relative to their duties of the roads,) who shall be notified of such their appointment, in writing, by the clerk of said court,



within ten days after such appointment, under the penalty of forty dollars, for every such default. And if any commissioner or commissioners, within ten days after the receipt of such notification, shall not make his or their resignation, to some one of the justices aforesaid, such commissioner shall be considered as having accepted such appointment. And the commissioners so appointed, shall have full power and authority to proceed to apportion the roads and hands for the districts aforesaid. And in case of refusal, departure or decease of any such commissioners, the inferior courts in the counties aforesaid, shall have power to fill such vacancy, either in term time or vacation.

of their appointment. Within what time may resign. General authority of Commissioners. Vacancy supplied by Inferior Court.

15. SEC. II. All male inhabitants, mulattoes and free negroes, and all male slaves, from the age of sixteen to forty-five, (in the counties aforesaid,) shall be, and they are hereby declared to be, obliged to appear with such implements as directed by the overseer, and work on the several roads, causeways and bridges, within the several districts to which such male white inhabitants, mulattoes, free negroes and male slaves, shall have been allotted, pursuant to this act; or such male white inhabitants, mulattoes, free negroes, and owners, managers or employers of such negroes or male slaves, shall be liable to the fines and penalties in this act defined and expressed.—[See 50 and 63.]

Who liable to work on the public Roads.

16. SEC. III. The commissioners appointed under this act, or a majority of them, shall and they have hereby full power and authority to appoint one or more person or persons, within their several districts, as overseers, to summons all such persons as are obliged to work within the said districts, at least three days before the time of working; stating the time and place of meeting; with such implements as shall be deemed necessary for the repairing of the road; and at such times of the year, as in his opinion, the roads may require repairing, (not to exceed five days at any one time of working, nor to exceed fifteen days in twelve months, unless emergencies require it,) to repair and work on the roads, causeways and bridges within the same.—[see 57.] And the several owners, managers, or employers of male slaves within the several districts, shall when summoned as aforesaid, deliver to the person summoning him, her or them, a list of all such male slaves as are by this act, liable to work on said roads, in writing, signed by such owner, manager or employer, under a penalty of three dollars for each hand; which list the person summoning shall deliver to any one of the commissioners in the district in which he was appointed to summon, as aforesaid.

Commissioners to appoint Overseer, who must summon hands. What the summons must specify. How many days hands may be required to work. Owner, etc. must furnish list of hands. Penalty for neglect or refusal.

17. SEC. IV. Every male white inhabitant, free negro or mulatto, who being duly summoned to work, (in the respective districts wherein such male white inhabitants, free negroes or mulattoes are obliged to work, by this act,) shall neglect or refuse to obey such summons, he shall, for each day he should so refuse or neglect to appear and work, as aforesaid, forfeit a sum not less than one dollar, nor more than three dollars, (commissioners aforesaid, excepted,) for each hand so in default.

Penalty for refusing or neglecting to appear and work.

18. SEC. V. It shall be the duty of the commissioners, or a majority of them, to issue executions against defaulters, under their hands and seals, directed to any lawful constable of the district, for the amount of all fines by them imposed by this act, unless a satisfactory excuse be rendered to them, on oath, within twenty days, by the person or persons returned by the overseer as defaulters. And it shall be the duty of the constable, to levy and collect such fines in the same way and manner as executions issuing from the justices' courts; and when collected, the said constables shall, within ten days, pay over the amount collected, to the commissioners, or any one of them; one-half of which shall be paid by the com-

Commissioners authorized to issue executions. Excuse may be made. Constable to collect executions, and pay over the money. Money, how disposed of.



- missioners to the overseer; and the remainder, together with any fines which may be collected from the overseers, shall be paid to the inferior court, and applied to the building and repairing bridges in their counties: *Provided*, that overseers shall not be witnesses against defaulters to any other fact than that of summoning to work on the said roads.
- Overseers witnesses.** 19. SEC. VI. It shall be the duty of all overseers appointed, or that may hereafter be appointed, to superintend the working on and repairing the road or roads, laid out and assigned by the commissioners to their superintendence, and cause the same to be well worked on and repaired, in the best possible manner which the situation of the land over which said road shall pass will admit of, and to make a return to the commissioners, or some one of them, (within five days after every time of working on said roads,) a list of all defaulters and deficiencies which may have taken place during such time of working on said road. And when any overseer shall, at any time within twelve months after his appointment, neglect or refuse, faithfully to discharge the duties required of him as overseer, he shall be subject to a fine, not exceeding twenty dollars, [see 4.] And it shall be the duty of the commissioners to notify such overseer of any failure of duty, and unless satisfactory excuse be given to said commissioners, or a majority of them, within twenty days after such notice being given, they shall issue execution against such delinquent overseer, for the sum for which he had laid himself liable, as pointed out by this act; directed to any constable in the district where such overseer may reside, for the collection of said fine.
- Duty of Overseer.** 20. SEC. VII. When any road may be a district line, the commissioners of each district shall meet and co-operate in appointing overseers on such roads; and where any dispute may happen relative to district lines, the commissioners of each district shall cause the lines to be plainly marked out and designated.
- How road to be worked.** 21. SEC. VIII. All overseers shall cause their respective roads to be cleared out, at least thirty feet wide; and all causeways, at least sixteen feet wide.—[See 47.]
- Defaulters to be returned.** 22. SEC. IX. When any person shall hereafter, make any fence, or cut any tree, or make other obstructions in or across any public road, the commissioners may be notified of the obstructions, [if the same do not come under their knowledge,] or any one of them; and unless removed in two days, such person shall, for every such offence, pay a fine not exceeding twenty dollars, to be recovered by warrant, under the hand and seal of any justice of the peace; to be applied as is herein directed. And it shall be the duty of the overseer of the road, forthwith, to cause the said obstructions to be removed.—[See 55.]
- Overseer fined for default.** 23. SEC. X. All overseers are hereby authorized to make use of any timbers for the use of the road upon which they may be required to work, except board and shingle timbers.
- Commissioners to notify overseer of neglect of duty, and to fine him, unless excused.** 24. SEC. XI. When it shall be necessary to have bridges, over any water-course, which divides one county from another, the inferior court of each county shall join in appointing commissioners for the building of and keeping in repair the same; and the expenses thereof, shall be defrayed by both counties, in proportion to the amount of the general tax of each, to be estimated by the digest of the general tax, taken next before such contract. [See 5 and 48.]
- Roads being district lines, what to be done.** 25. SEC. XII. When any public bridge shall require repairing, it shall be the duty of the commissioners, or any of them, to give notice in writing thereof, to the undertaker or one of his securities, stating the repairs necessary to be made, and requiring the same to be made within a reasonable
- Width of Roads and Causeways.**
- Persons obstructing Road liable to a fine of twenty dollars.**
- Timber may be used.**
- Bridges between Counties, how provided for.**
- Providing for the repair of Bridges.**



time, to be set forth in the said notice; and if the same shall not be made within such time, such commission or commissioners shall employ some other person or persons, forthwith, to make such repairs; and shall immediately thereafter, issue an execution against such undertaker and his securities, for the amount given for the said repairs, with cost.—[See 48.]

26. SEC. XIII. When any commissioner, appointed for letting any public bridge, under and by virtue of this act, shall undertake the building and keeping in repair the same; or shall become the security for any other person so undertaking, the powers of such commissioner shall from thenceforward cease and determine, and the inferior court in the county, shall appoint one other in his room. Commissioner becoming undertaker, or security, his authority ceases.

27. SEC. XIV. In all cases where the justices of the inferior courts have appointed, or may hereafter, appoint commissioners in their respective districts, according to the provisions of this act, and the commissioners so appointed shall, at any time, within twelve months after their appointment, neglect or refuse to discharge the duties required by this act, and sufficient proof thereof being made to the inferior court, they shall be fined in a sum not exceeding sixty dollars, for every such refusal or neglect of duty; which fines, when collected, shall be by the inferior court, appropriated to the building and keeping in repair the public bridges within the county. Penalty on Commissioner for neglect or refusal to perform his duty. Money how appropriated.

28. SEC. XV. When any of the commissioners as aforesaid, shall resign, the justices of the inferior court, or a majority of them, shall in term-time or vacation, appoint other fit and proper person or persons, in their stead, who shall be subject to the like services and penalties, as pointed out by this act; and shall also, continue to discharge the duties required of them, for the term of one year from the date of their appointment, and until they shall signify their resignation to the justices of the inferior court. Commissioner resigning, his vacancy may be supplied, either in term time or vacation.

29. SEC. XVI. In case where any vacancy may happen by death, removal or other disability, the justices of the inferior court, or a majority of them, shall proceed to fill such vacancy, either in term-time or vacation, and the person so appointed shall be subject to the like duties and penalties, as all other commissioners are, appointed by virtue of this act. Person appointed to fill vacancy, liable like original Commissioner.

30. SEC. XVII. The commissioners so appointed, or a majority of them, shall hear and determine on all cases of default for neglect of duty, required by this act: *Provided*, such hearing and determining shall be within thirty days after such default: *Provided*, the party in default shall have ten days' notice, in writing, from the overseer, (to be left at his usual place of residence,) of the time and place of hearing and determining such default. Power of Commissioners. Defaulter to have notice of time and place.

31. SEC. XVIII. All moneys collected by virtue of this act, except such as are otherwise provided for, shall be, by the commissioners aforesaid, paid into the hands of the clerk of the inferior court, to be applied to the repairing of the public bridges and causeways. Moneys how applied.

32. SEC. XIX. In all cases where commissioners have been or may hereafter be appointed, for the purpose of reviewing any new road intended to be laid out, and shall report to the inferior court the propriety of opening the same, the said court may, if they, or a majority of them, deem it advisable, pass an order for opening such road. Discretion of the Inferior Court in opening new Road.

33. SEC. XX. In case any commissioner or commissioners, appointed by virtue of this act, shall neglect or refuse to discharge the duties required of them, as pointed out by this act, and information thereof being lodged with the justices of the inferior court, by any person, it shall be the duty of said court to notify such commissioner or commissioners of such information; and unless excuse be offered, to the satisfaction of the justices Proceedings against delinquent Commissioner.



of said court, or majority of them, within thirty days after such notice being given, they shall direct the clerk to issue execution against any such delinquent commissioner or commissioners, for the sum for which he had laid himself or themselves liable, as pointed out by this act; directed to any constable in the district where such commissioner may reside, for the collection of said fine, and to return the same at the next term of the said court; for which services the constable collecting and returning the same, shall receive from the justices of the inferior court, the usual fees, out of the money so collected.

Overseers to measure Roads and set up mile-posts.

34. SEC. XXI. From and after the first day of June next, it shall be the duty of all overseers of roads, leading from the court-house of their respective counties, within this State, in addition to the duties herein required, to measure all that part of the road to which they may be appointed overseers, commencing at the said court-houses; and at the end of each mile, to set up a post or mark, on some conspicuous place, which shall designate the number of miles from thence to the court-house as aforesaid.

How mile-posts are to be continued from district to district.

35. SEC. XXII. Where it shall so happen, that in measuring from the court-house, as aforesaid, to the end of the district to which they are appointed overseer, and the distance shall not be an equal number of miles, the overseer of the same road in the next adjoining district, shall be compelled to commence at the last mile-post in the district thus measured, unless such district shall end at some county line, then and in that case, the overseer of such district shall, by some post or mark, designate the distance from such county-line to the court-house of their respective counties, as aforesaid.

Direction boards to be put up; what to be on them.

36. SEC. XXIII. It shall be the duty of all overseers, as aforesaid, at the fork of each public road within their respective districts, to place or post up, in some conspicuous place, a board or other mark, designating on the same, the most public place to which each road directs.

Where measuring to commence.

37. SEC. XXIV. Every public road leading from any sea-port, or other town, shall be measured from thence until it intersects the first court-house or county-town.

Post to be removed when the road is altered.

38. SEC. XXV. When any public road, as aforesaid, shall be altered so as to make it necessary to remove any post, it is hereby made the duty of the overseer of said road, to remove such post or set up others, in such manner as to answer the purpose contemplated by this act.

Penalty on Overseer for neglect in setting up posts and boards.

39. SEC. XXVI. In case any of the overseers should fail or omit to measure, post and mark, their respective roads, as contemplated by this act; or omit to set up sign-boards, as above contemplated, he shall forfeit and pay a sum not exceeding twenty dollars, to be recovered as other fines, before-recited in this act, and appropriated to the same purpose.

Public Roads how laid out.

40. SEC. XXVII. All public roads shall be laid out the nearest and best way to the place to which they are intended; and the commissioners of roads, shall in all cases designate the same, on oath, if required by the court.

Penalty for removing or defacing mile-posts or sign-boards.

41. SEC. XXVIII. If any person or persons shall remove or deface the said posts, boards or marks, they shall forfeit and pay a sum not exceeding thirty dollars, for each and every offence; to be recovered before any court having competent jurisdiction of the same; one-half to the county and the other half to the informer. And if the same offence should be committed by a slave or slaves, or any free person or persons of color, he, she or they shall receive, on conviction, not exceeding thirty-nine lashes on his, her or their bare backs, to be inflicted by the order of any justice of the peace of the district where the offence was committed.—[*And see Cobb's Penal Code 174; number 264 and 267.*]

42. SEC. XXIX. The justices of the inferior courts of each county in this State, or a majority of them, shall have power and authority, to hear and determine on all matters which may come before them, relative to roads, bridges, &c., as are authorized by law, either in term-time, or while sitting for ordinary purposes, or at any special meeting held for that purpose.

Road matters may be acted on in vacati'n.

43. SEC. XXXI. The commissioners so appointed, shall keep a book and enter down in writing, all fines which may arise from default, and return the same annually to the inferior court, in order to show the amount of fines (if any) collected; and in failing to comply with the requisitions as are herein stated, to be subject to a fine not exceeding one hundred dollars, imposed by the court, collected as other fines, and paid over to the clerk of the inferior court for county purposes.

Commissioners must keep a book, enter fines therein, and return the same to the Inferior Co't.

44. SEC. XXXIII. The inferior courts shall have power to establish ferries; to rate the toll to be taken, as well of those already established, as any which may hereafter be established, within the several counties in which they may severally reside. And generally, all other matters relative to ferries, which may in their judgment be of public utility. Any law to the contrary notwithstanding: *Provided, nevertheless*, that in all cases where the inferior court have or shall establish a ferry over any water-course, they are hereby authorized and required to cause every such person to give bond and sufficient security, in such sum as they may think proper; conditioned for their keeping in repair, a good and sufficient flat and attendance.—[See 11.]

Inferior Co'ts have power to establish Ferries.

45. SEC. XXXIV. The second section of an act entitled "an act to empower the inferior courts of the several counties in this State, to order the laying out of public roads, and to order the building and keeping in repair the public bridges," passed the 4th day of December, 1799, be and the same is hereby declared in full force and effect, where the same is not repugnant to any of the provisions of this act.

2d section act of 1799, declared to be in force.

SEC. XXXV. All road-laws heretofore passed, from the 16th of December, 1811, which militate against this law, be and the same are hereby repealed.

### *Appointment of Road-Commissioners.*

STATE OF GEORGIA, {  
Houston County. }

INFERIOR COURT,

January Term, 1859.

Ordered, That James Jones, J. P., Samuel Felder and John Smith, be and they are hereby appointed Commissioners of the Public Roads, in and through the *fifteenth* Road-District, in said County. Said Commissioners are hereby invested with all the authority conferred by law on the Commissioners of Roads, in said District. Said Commissioners are hereby required to do and perform all the duties, within said District, which, by law, they are required to do and perform; under the penalty affixed by law.

*A true extract from the Minutes.*

JOHN H. KING, Clerk.

NOTE.—The Clerk must notify the Commissioners, *in writing*, of their appointment, within ten days thereafter, under the penalty of a fine of forty dollars for each default.

A Commissioner, (provided he has a lawful excuse,) may resign his appointment within ten days after it is made; but he is not allowed to resign capriciously; that is to say, not because he is unwilling to serve; or because the appointment will conflict with his private interests, etc.



Vacancies in the Boards of Commissioners may be supplied by the Inferior Courts, in vacation, as well as in term-time.

In case of the death, resignation or removal of the Justice of the Peace appointed Commissioner, the other two Commissioners may administer oaths and perform all the other duties of their office.

### *Appointment of Overseer.*

STATE OF GEORGIA, }  
Houston County. }

BOARD OF COMMISSIONERS,

January 20, 1859.

Ordered, That *William H. Talton*, be and he is hereby appointed Overseer of the Public Road passing through the *fifteenth* Road-District of said County, *commencing at the town of Perry and running in the direction of Travellers' Rest, by the residence of John Killen, John Hoes and Silas Rawls*. Said Overseer is hereby invested with all the authority conferred by law on Overseers of Public Roads. And is required to do and perform, all and singular, the duties of Overseer of said Road. Said Overseer is allowed the hands of said *John Killen, John Hoes and Silas Rawls*.

JAMES JONES, J. P. }  
SAMUEL FELDER, } *Com'rs.*  
JOHN SMITH, }

### *List of Defaulters returned by Overseer.*

STATE OF GEORGIA, } To the Commissioners of Roads in and for the  
Houston County. } *fifteenth* Road-District.

At a working of the Road, of which the undersigned is Overseer, (commencing on the *fifth* instant, and continuing for *two* days,) the following are the defaulters—*two* hands belonging to *Silas Rawls*, for *two* days. This *April* 10, 1859.

WILLIAM H. TALTON, *Overseer*.

### *First Sitting of the Board of Commissioners.*

STATE OF GEORGIA, } It appearing to the undersigned, by the return  
Houston County. } of *William H. Talton*, Overseer, that, at a recent working of the Road, of which said *William H. Talton* is Overseer, *Silas Rawls* made default in *two* of his hands; therefore, ordered, that said *Silas Rawls* be notified to appear at a sitting of the Commissioners of Roads, in and for the *fifteenth* Road-District, to be held at the *Court-House*, in said District, on the *20th instant*, to answer to said return for default. This *April* 10, 1859.

JAMES JONES, J. P. }  
SAMUEL FELDER, } *Com'rs.*  
JOHN SMITH, }

### *Notice to Defaulter.*

STATE OF GEORGIA, } *Silas Rawls*—You are hereby notified to be  
Houston County. } and appear at a sitting of the Board of Road Commissioners, in and for the *fifteenth* Road-District, at the *Court-House*, in said District, on the *20th instant*, to answer for the default of *two*

of your hands, at a recent working of the Road, of which I am Overseer. This *April* 10, 1859.

WILLIAM H. TALTON, *Overseer*.

### *Second Sitting of the Board of Commissioners.*

STATE OF GEORGIA, } At a sitting of the Commissioners of Roads,  
Houston County. } in and for the *fifteenth* Road-District, in said  
County, held at the *Court-House*, in said District, upon the case of  
Defaulters, it appeared that *Silas Rawls*, after being duly notified,  
made default (in *two* hands, for *two* days,) in working on the Road to  
which the hands of the said *Silas Rawls* have been assigned. And it  
appearing that said *Silas Rawls* has been properly notified to attend  
the sitting of the Board of Commissioners, *this day*, to answer to said  
default; and said *Silas Rawls* having failed to appear; ordered, that  
said *Silas Rawls* pay a fine of *one dollar* for each of said hands, for each  
day of their default. Further ordered, that *fieri facias* issue against  
said *Silas Rawls* for the amount of said fine and costs. This *April* 20,  
1859.

*Witness our hands and official signatures.*

JAMES JONES, J. P. }  
SAMUEL FELDER, } *Com'rs.*  
JOHN SMITH, }

### *Writ of Fieri Facias.*

STATE OF GEORGIA, } To *John Jacobs*, Constable in and for the 619<sup>th</sup>  
Houston County. } District, Georgia Militia.

We command you, that of the goods and chattels, lands and tene-  
ments of *Silas Rawls*, of said District, you cause to be made the sum  
of *four* dollars, the amount of fines imposed upon the said *Silas Rawls*,  
for the default of *two* of his hands, in the non-performance of Road-  
work; whereof the said *Silas Rawls* is convicted and liable. And said  
sum being collected, together with the cost of this precept, and all  
future costs; within ten days thereafter, you are required to pay over  
to the undersigned, or one of them.

*Witnesses our hands and seals, this April* 20, 1859.

JAMES JONES, J. P. [L. S.] }  
SAMUEL FELDER, [L. S.] } *Com'rs.*  
JOHN SMITH, [L. S.] }

### *Oath of Defaulter.*

You do solemnly swear, that you will true answers make to such  
questions as may be asked you, by the Commissioners, or their author-  
ity, touching your excuse for non-performance of Road-duty—so help  
you God.

NOTE.—After administering the above oath, the Commissioners proceed to ascertain  
from the Defaulter, his reason for not working on the Road, as he was required to do.  
Or, the Defaulter may, if he prefers it, put his excuse in the form of an affidavit, (within  
*twenty days*,) and file it with the Commissioners, who may consider of its sufficiency at  
their sitting.



*Notice to Negligent Overseer.*

STATE OF GEORGIA, } To *William H. Talton*, overseer of the Road  
                   *Houston County.* } leading from *Perry* to *Travellers' Rest*, through  
   } the *fifteenth* Road-District.

Whereas, we have received information, that from your neglect and inattention, the Road of which you are Overseer is now, and has been for some time past, in bad order, and out of repair; you are, therefore, hereby notified and required to be and appear before the Commissioners of said Road-District, at the *Court-House* in said District, on the *fifteenth* instant, to answer for your default.

*Witness our hands and official signatures, this May 5, 1859.*

JAMES JONES, J. P. }  
 SAMUEL FELDER,       } *Com'rs.*  
 JOHN SMITH,           }

*Notice to an Obstrucater of the Road.*

STATE OF GEORGIA, } To *Thomas Surley*.—Whereas, I have received  
                   *Houston County.* } information that you have formed an Obstruction  
 in the Public Road leading from *Perry* to *Travellers' Rest* through the *fifteenth* Road-District, *by erecting a fence across said Road*: you are, therefore, hereby notified and required to remove said Obstruction within two days from the date hereof, or you will be dealt with as the law directs.

*Witness my hand and official signature, this May 1, 1859.*

SAMUEL FELDER, *Com'r.*

*Commissioner's Notice to Overseer.*

STATE OF GEORGIA, } To *William H. Talton*, Overseer of the Road  
                   *Houston County.* } leading from *Perry* to *Travellers' Rest*, through the  
   } *fifteenth* Road-District.

Whereas, I have been informed that *Thomas Surley* has formed an Obstruction in the Road of which you are Overseer, *by erecting a fence across said Road, near the residence of Silas Rawls*. And whereas, said *Thomas Surley* has been notified to remove said Obstruction, which he fails and neglects to do: therefore, you are hereby required and directed, forthwith, to summon such number of your hands as may be sufficient, and remove said Obstruction.

*Given under my hand and official signature, this May 5, 1859.*

SAMUEL FELDER, *Com'r.*

*Petition for a new Road.*

STATE OF GEORGIA, } To the *Inferior Court* of said County.—The peti-  
                   *Houston County.* } tion of the undersigned respectfully sheweth, that  
 your petitioners conceive the convenience of the travelling public, and the people of the neighborhood, will be greatly promoted, by the establishment of a Public Road, *commencing at the town of Perry, and running in the direction of Travellers' Rest, by the residence of John Kil-*

len, of John Hoes, of Silas Rawls and of James W. Belvin, to the eastern line of the County of Macon; wherefore, your petitioners pray the passing of an Order by the Court, establishing and opening said Road. This May 1, 1859.

1. Silas Rawls.
2. John Hoes.
3. John Killen, etc.

4. Peter Sneezer.
5. James R. Felder.
6. Joel W. Mann, etc.

NOTE.—If an alteration in an old Road be desirable, a petition to the Court must be preferred, as in the application for a new Road. The idea that the Road may be changed without an Order, is without foundation in law.

### *Appointment of Reviewers.*

STATE OF GEORGIA, }  
Houston County. } INFERIOR COURT, *In Chambers*, May 2, 1859.

Upon the petition of *Silas Rawls* and others, showing that the establishment of a New Road, *commencing at the town of Perry and running in the direction of Travellers' Rest, by the residence of John Killen, of John Hoes, of Silas Rawls and of James W. Belvin, to the eastern line of the County of Macon*, will conduce to the convenience of the travelling public, and the people of the neighborhood, through which said Road will pass; it is hereby ordered, that *Marcus Kunze, Noble W. Jones and Professor Potts*, be and they are hereby appointed Reviewers of said contemplated Road; and should said Reviewers find said contemplated Road of public utility, they are hereby directed and required to mark out the same, and make report thereof to this Court.

NOTE.—A certified copy of the above Order must be furnished the Reviewers, by the Clerk of the Inferior Court.

If an old Road is to be altered and changed, the same course of proceeding must be had, as when the establishment of a new one is petitioned for.

### *Report of Reviewers, (on the back of the Order of Appointment.)*

STATE OF GEORGIA, }  
Houston County. } *To the Inferior Court of said County.*

The undersigned, appointed for the purpose of Reviewing the Road petitioned for by *Silas Rawls* and others, *commencing at the town of Perry and running in the direction of Travellers' Rest, by the residence of John Killen, of John Hoes, of Silas Rawls and of James W. Belvin, to the eastern line of the County of Macon*, have performed the duty assigned them—they find that the contemplated Road will be one of much public utility and convenience—they proceeded to mark out said Road, as required.

Sworn to and subscribed,  
before me, this May 10, 1859.  
*James Mack, J. P.*

MARCUS KUNZE, }  
NOBLE W. JONES, } *Reviewers.*  
PROFESSOR POTTS, }

### *Order establishing the Road petitioned for.*

STATE OF GEORGIA, }  
Houston County. } INFERIOR COURT,  
*In Chambers*, May 11, 1859.

Upon the report of the Reviewers appointed to review a contem-



plated Road, *commencing at the town of Perry, and running in the direction of Travellers' Rest, by the residence of John Killen, of John Hoes, of Silas Rawls and of James W. Belvin, to the eastern line of the County of Macon*, that said contemplated Road will be one of much public utility; it is therefore ordered, that said Road be and the same is hereby established as one of the public Roads, in said County. And it is further ordered, that the Clerk of this Court furnish the Commissioners of the *fifteenth* Road-District, with a certified copy of this Order; and said Commissioners are directed and required to have said Road opened, and an Overseer and hands appointed, for said Road.

AN ACT to secure to the legal Proprietors of the land and Landing at a place known by the name of Carter's Ferry, on the Alatomaha river, in the county of Tattnall, the right of an established Ferry. And to Lewis Hall, his heirs and assigns, at the place called Berry-hill Bluff. And to regulate the Toll on Jersey-Wagons, in certain cases, throughout this State.—*Approved Dec. 22, 1820.*

Toll on Jersey-  
wagon the  
same as on  
cart.

46. SEC. III. The ferriage or toll on the description of carriages called and known as Jersey-Wagons, when they are used as carriages of burthen, shall be, at these and all other ferries, bridges or turn-pike gates within this State, where the toll or ferriage on such carriages is not particularly defined by law, the same that is established at such ferry, bridge or turn-pike gate, to be collected on carts.

AN ACT to alter and amend the eighth section of an act entitled "an act to amend the Road-laws of this State," passed the 19th day of Dec., 1818.—*Approved Dec. 21, 1822.*

Width of  
Roads and  
Causeways.

47. From and after the passing of this act, all overseers of roads, appointed in pursuance of the before-recited act, shall cause their respective roads to be cleared twenty feet wide, except market-roads, which shall be cleared thirty feet wide; and shall cause all causeways to be made sixteen feet wide. Any thing contained in the said section of the said act, to the contrary notwithstanding.

### *Bridges.*

AN ACT to authorize the Justices of the Inferior Courts of either County, to build Bridges over water-courses dividing Counties.—*Approved Dec. 20, 1824.*

Bridges over  
water-courses  
dividing coun-  
ties, how pro-  
vided for.

48. From and after the passage of this act, it shall and may be lawful, in all cases where the justices of the inferior court of one county shall refuse or fail to coöperate with another, in building a bridge over a stream dividing the counties, for the justices of the inferior court of the county, to proceed to build a bridge over said stream, subject to no other restriction than they would be were the said bridge in their own county entirely.—[*See 25.*]

AN ACT to exempt persons who are Ferry-men from performing Militia Duty, in time of peace.—*Approved June 11, 1825.*

Ferry-men ex-  
empt from  
militia duty  
in time of  
peace.

49. From and after the passage of this act, all persons who are regularly employed as ferry-men, liable to perform militia duty, shall for and during the period they are employed as aforesaid, be exempt from militia duty, in times of peace.

AN ACT to alter and amend an act, entitled "an act to amend the Road-Laws of this State," assented to on the 19th Dec., 1818.—*Approved Dec. 20, 1826.*

50. From and immediately after the passage of this act, when any person liable to do road duty in this State, shall make application to the commissioners of the roads in this State, for a portion of road for himself and hands to work on and keep in repair, it shall be the duty of said commissioners, or a majority of them, in each captain's district, to meet on such application, and to parcel off and lay out to each applicant and his hands, liable to work, as aforesaid, some equal and just portion of said road, as to the said commissioners may seem reasonable and proper. And the said portion of road, so laid out to such person, shall be increased or diminished, as the said applicant's hands shall increase or diminish.—*[See 14.]*

Road Commissioners must assign a portion of Road to applicants.

51. SEC. II. The said person or persons so receiving any portion of road, as aforesaid, shall make annual report to the commissioners of the number of his hands, liable to work. And after such applicant shall receive, work on and put in good repair said portion of road, so assigned to him by the commissioners, as aforesaid, then such applicant and hands, shall not be transferred to any other part of the road, without his consent. And in case any person shall neglect to keep in good repair such portion of road as may be laid out to him, as aforesaid, he shall be liable to all the penalties and forfeitures to which commissioners of roads are now liable for neglect of duty, and shall be proceeded against in like manner: *Provided nevertheless*, that if the commissioners and applicants should not agree on the portion of road to be laid off to him, then the said applicant shall remain, and work, in common, with other hands, in the district in which they belong, according to the road-laws now of force in this State.

Applicant must report annually his hands. He may not be transferred.

Liability of applicant.

Applicant not satisfied, to remain and work with other hands.

SEC. III. *[Repeals all conflicting laws.]*

AN ACT requiring Justices of the Peace, in Districts comprehending any Town or Village of this State, to exercise, in certain cases, their usual authority, in relation to Roads and Patrols.—*Approved Dec. 21, 1833.*

52. It shall be the duty of justices of the peace, in any district comprehending an incorporated town or village of this State, to exercise the authority with which existing laws invest them, in relation to roads and patrols, in all cases within such town or village, whenever the citizens of the same shall fail to appoint commissioners, trustees or council, to enforce such road and patrol duty.

In Towns Justices of the Peace to enforce road duty in certain contingencies.

AN ACT to amend the Road-Laws of this State, so far as to cause to be kept in good repair all places where any Rail-road which now is, or may hereafter be chartered, crosses, or may cross any Public Highway in this State.—*Approved Dec. 31, 1838.*

55. SEC. I. *Be it enacted*, That it shall be the duty of all rail-road companies, which are now, or may hereafter be incorporated; as well as all rail-road and banking companies, which now are or may hereafter be incorporated, to put and keep in good travelling order and repair, the public roads, at such point or points where the same may be crossed by their respective rail-roads. And whenever any public road shall be obstructed at the point before mentioned, by any rail-road, as contemplated in this act; or the same shall be neglected to be kept in good travelling order and repair, at the before-mentioned points, it shall be the duty of the road-commissioners, or a majority of them, residing in the district

Public Roads crossed by Rail-road, to be kept in good order by the Rail-road Company. Company neglecting duty, how to be notified.



where the cause of complaint may arise, to notify the president of the company, in writing, to cause the public road or roads to be worked on at the points before mentioned, removing therefrom all obstructions at those points, and putting them in good travelling order.

Company neglecting to act for thirty days.

56. SEC. II. Whenever any obstructions, at the points herein-before specified, (or neglect to remove the same by the proper company,) shall come to the knowledge of the commissioners aforesaid, or any one of them; or whenever one or more of said commissioners may be notified by any citizen, of the existence of any such obstruction, or neglect to remove the same, it shall be the duty of said commissioners, forthwith, to notify the president, as aforesaid, to cause such obstructions to be removed, and to put the public road, at the points herein contained, in good travelling order, within thirty days from the date of such notice. And in case such president of the company complained of, shall not remove said obstructions and cause the public road to be put in good order, at the points herein contemplated, then it shall be the duty of the commissioners aforesaid, to cause the same to be done by the overseer of the public road, liable to work on that part of the road where such obstructions may exist.

Overseer to put the Road in good order, and report to the Commissioners, who shall issue execution for the amount of expenses.

And said overseer, within five days after he shall have removed said obstruction, shall report, under oath, to the proper commissioners, the amount and value of the labor employed by him in removing such obstructions and putting the public road in good order, at the contemplated points; whereupon, said commissioners shall issue execution, under their hands and seals, directed to any lawful constable, if the amount does not exceed thirty dollars; or to any lawful sheriff, if the amount exceeds thirty dollars; to be by him levied on, and collected out of any property of such defaulting rail-road company; the same to be advertised and sold, under the laws regulating constables' and sheriffs' sales. Which money, when collected, shall be paid over to the commissioners aforesaid, and by them applied to the payment for removing said obstructions and putting said road in good order: *Provided*, that said president of such defaulting rail-road company, may stay execution for twenty days, by making affidavit before any one of said commissioners, to such facts as do, in his opinion, constitute a good excuse and defence, which excuse and defence shall be heard and decided upon, on a day to be mentioned by the commissioners, not exceeding ten days from the time such affidavit may be made. And on hearing the excuse and defence, the commissioners shall make such final order in the premises, as to them may seem proper and just.

Money to be paid over to Commissi'n'rs.

Company allowed to make excuse and defence.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Notice to President of Rail-road Company.*

STATE OF GEORGIA, } To *Richard B. Cuyler*, President of the South-  
Houston County. } western Rail-road Company.

You are hereby notified, that at *Fort Valley*, in said County, where the Rail road of which you are the President, crosses the Public Road, leading from *Perry to Knoxville*, an obstruction has been formed [*here describe the obstruction,*] so as to prevent persons travelling said Public Road, from conveniently passing at said point; you are, hereby, required to remove said obstruction, within the time allowed by law, or you will

be proceeded against, according to the statute, in such case made and provided.

*Witness our hands and official signatures, this May 1, 1859.*

JAMES JONES, J. P. }  
SAMUEL FELDER, } *Com'rs.*  
JOHN SMITH, }

### *Notice to the Overseer of the obstructed Road.*

STATE OF GEORGIA, } To *William H. Talton*, Overseer of the Public  
Houston County. } Road leading from *Perry to Knoxville*, through the  
*fifteenth Road-District.*

Whereas, the undersigned have been informed, that the *South-western Rail-Road* has caused an obstruction in the Public Road, at *Fort Valley*, by [*here describe the obstruction.*] And whereas, after notice, the President of said Rail-Road Company neglects and refuses to remove said obstruction; therefore, you are hereby required to call out as many of your road-hands as you may deem necessary for the purpose, and remove said obstruction. And you are further required, within five days after the removal, by you, of said obstruction, to report, under oath, the amount and value of the labor performed by you, in removing said obstruction.

*Witness our hands and official signatures this June 1, 1859.*

JAMES JONES, J. P. }  
SAMUEL FELDER, } *Com'rs.*  
JOHN SMITH, }

### *Overseer's Report.*

STATE OF GEORGIA, } To the *Commissioners of Public Roads in and for*  
Houston County. } *the fifteenth Road-District.*

In obedience to an order of the *first instant*, I proceeded to remove the obstruction in the Public Road, caused by the *South-western Rail-road* at *Fort Valley*. I was employed in this service *three days*, with *ten hands*, and estimate the cost and value of the labor performed, at *thirty dollars*.

Personally appeared before the undersigned, one of the Justices of the *Peace*, of said County, *William H. Talton*, who being sworn, saith that the facts stated in the above Report are just and true.

Sworn to and subscribed,  
before me, this *June 6, 1859.* }

*James Mack, J. P.*

WILLIAM H. TALTON, *Overseer.*

### *Affidavit of the President of the Rail-road.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the Commissioners of Public Roads, in and for  
the *fifteenth Road-District*, *Richard R. Cuyler*, President of the *South-western Rail-road Company*, who being sworn, saith that the reason of



not removing the obstruction of the Public Road at *Fort Valley*, was, because [*here state the excuse and defence fully and at large.*]

Sworn to and subscribed,  
before me, this *June 6*, 1859.  
*Samuel Felder, Com'r.*

RICHARD R. CUYLER, *President.*

NOTE.—The above Affidavit will stay the issuing of Execution for twenty days, and authorizes the hearing of the party before the Board of Commissioners.

If, at the hearing, the Commissioners deem the excuse unsatisfactory and insufficient, execution must issue for the amount of the Overseer's Report, against the property of the *South-western Rail-road Company*. If the excuse tendered by the President be deemed sufficient, further proceedings are dropped.

With simple and suitable alterations, the form of the execution to be issued, is the same as in ordinary cases.

AN ACT to amend the Road-Laws of this State, so far as to compel a portion of the hands liable to perform Road duty, to perform that duty at any time when required by the Overseer of the Roads on which they are liable to work.—*Approved Dec. 23, 1839.*

Extraordinary  
calls upon  
road-hands.

57. SEC. I. *Be it enacted*, That any person or persons resident in any district where such road or roads, and bridge or bridges, may become impassable, by any means, may, upon the overseers or commissioners of said district, [*summons*,] (whose duty it shall be to call out as many hands as he may think proper,) to repair the same, within three days after receiving such information.—[*See 16.*]

Penalty for  
neglect or  
refusal.

58. SEC. II. It shall be the duty of the hands so summoned, to attend and perform the duty required of them, and in case of their neglect of said duty, they shall become subject to the penalties now in force, against hands for neglect of said duty.

Hands excus-  
ed for equal  
number of  
days.

59. SEC. III. The said overseer shall take notice of the time such hands work, and shall excuse them from the performance of road duty, (at the time the other hands are required to work on the road,) a number of days equal to the time they have worked on the road, under this act.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to continue and establish the Ferries of Evan Howell and George M. Waters across the Chattahoochee river, on their own land, in Gwinnett and Forsyth Counties. And to regulate the manner of admeasurement of space in relation to Ferries.—*Approved Dec. 4, 1841.*

Mode of  
measuring dis-  
tance be-  
tween Ferries  
and Bridges.

60. SEC. II. Where exclusive rights have been granted heretofore, to any person or persons, to prevent others from erecting bridges or ferries, within a given distance up or down the river or stream, from any bridges or ferries so established, the distance shall be computed by the course or measurings [*meanderings*] of the river or stream.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to repeal a part of the eleventh section of an act entitled "an act to empower the Inferior Courts of the several Counties in this State, to order the laying out of Public Roads, and to order the building and keeping in repair of Public Bridges," approved Dec. 4th, 1799. And further to extend and define the power of said Courts, as to the construction of Bridges.—*Approved Dec. 26, 1845.*

A portion of  
the act of  
1799 repealed.

61. SEC. I. *Be it enacted*, That from and after the passage of this act, so much of the before-recited section as requires that the inferior courts shall ap-

point one or more commissioner or commissioners to contract for the building of public bridges, and which requires that such contract shall not be made for a time less than five nor more than seven years; and that said commissioner or commissioners, shall after taking an oath, and legal advertisement, proceed to let the same at public outcry, to the lowest bidder, be and the same is hereby repealed.

62. SEC. II. The justices of the inferior court of the several counties in this State, or a majority of them, be and they are hereby authorised to contract for the building and keeping in repair of public bridges, for such time, and in such way, as they may deem most advisable; either by letting the same to the lowest bidder, hiring hands for that purpose, or in any other way that to them may appear right and proper. (And should they, at any time, let the same to the lowest bidder, that they be authorized to require and receive, the same bond that commissioners now do.) And that they shall levy the amount thereof, on the county, or order the same to be paid out of any funds of the county, subject to their disposal.—[See 5.]

Contracts for building bridges, how made.

Bond to be taken. a

How paid for.

SEC. III. Such laws as militate against this act, be and the same are hereby repealed.

### *Bond of Public Bridge-Builder.*

STATE OF GEORGIA, ) We, *John Doe* as principal, and *Richard Roe*  
Houston County. ) as security, both of the County and State afore-  
said, acknowledge ourselves held and bound to *John D. Winn, Henry M. Holtzclaw, William F. Postell, John Ragin and William T. Swift*, Justices of the Inferior Court, and their successors in office, in the sum of *five* hundred dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, at the letting out of the building of a Bridge, across *Big Indian Creek, near the town of Perry* in said County, said *John Doe* became the lowest bidder, at and for the sum of *two* hundred and *fifty* dollars: now, should the said *John Doe* well and truly perform his undertaking, in building said Bridge and keeping the same in good order and repair, for the term of *five* years, (according to stipulations entered into and filed in the Clerk's Office,) from the date of this obligation, then this obligation is to be void; otherwise, of force. This *May 1, 1859*.

Approved—  
*James Mack, J. P.*

JOHN DOE. [L. S.]  
RICHARD ROE. [L. S.]

### *Notice to Undertaker of Public Bridge.*

STATE OF GEORGIA, ) To *John Doe*—You are hereby notified that the  
Houston County. ) Bridge over *Big Indian Creek, near the town of Perry*, of which you were the builder, requires repairing; you are hereby required to repair the *railing* and the *flooring* of said Bridge, within *three days* from this date, otherwise proceedings will be instituted against you agreeably to the statute in such case, made and provided.

*Witness my hand and official signature, this November 1, 1859.*

SAMUEL FELDER, R. Com'r.

NOTE.—It is obvious that, after a Bridge is built, it becomes a part of the Public Road, and is under the authority of the Road Commissioners for the District in which it is situate.



This does not relate to Bridges across water-courses dividing Counties, but to Bridges altogether within one County.

Should the Undertaker disregard the notice given him by the Commissioner, the Commissioners of the Road must employ "some other person or persons, forthwith, to make such repairs; and shall immediately thereafter, issue an execution against such Undertaker and his securities, for the amount given for the said repairs, with costs."

### *Establishment of a Public Ferry.*

STATE OF GEORGIA, }  
Houston County. }

INFERIOR COURT,  
January Term, 1859.

Whereas, *Carlton Wellborn* petitions for the establishment of a *Ferry*, across the *Ocmulgee River*, near the mouth of *Sandy-Run Creek*; and it appearing to the Court, that said *Ferry* will be of much public utility and convenience; therefore, ordered, that said *Carlton Wellborn* be and he is hereby authorized to establish a *Ferry* at the place aforesaid, and that he be allowed to charge and receive the following rates at said *Ferry*, [*here specify the rates allowed, fully and particularly.*] And it is further ordered, that said *Carlton Wellborn* give bond and security, agreeably to law, in the sum of *two thousand* dollars.

### *Public Ferry Bond.*

STATE OF GEORGIA, } We, *Carlton Wellborn* as principal, and *Barnett*  
Houston County. } *Holliman* as security, acknowledge ourselves held  
and bound to *John Ragin*, *John D. Winn*, *Henry M. Holtzclaw*, *William F. Postell*, and *William T. Swift*, Justices of the Inferior Court of said County, and their successors in office, in the sum of *two thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, the Inferior Court, by order, has authorized said *Carlton Wellborn* to establish a *Ferry* across the *Ocmulgee River*, near the mouth of *Sandy-Run Creek*, and to charge for crossing at said *Ferry*, the sums stipulated in the order establishing said *Ferry*: now should said *Carlton Wellborn* keep, at all times, at said *Ferry*, a good and sufficient ferry-flat, and have and keep at said *Ferry*, competent attendance, and demand and receive no more than the charges allowed, for crossing at said *Ferry*, and in all respects comply with the statute in such case, made and provided, then this obligation to be void; otherwise, of force. This *January 10, 1859.*

Approved—  
*James Mack, J. P.*

CARLTON WELLBORN, *prin'l.* [L. S.]  
BARNETT HOLLIMAN, *sec'ty.* [L. S.]

NOTE.—*Carlton Wellborn* must "fix a board in a conspicuous situation," at his *Ferry*, near the landing-place; "the board to be painted black, with white legible characters written on the same, noting the different rates of ferriage allowed." And in case of any neglect, he is not entitled to the ferriage accruing at his *Ferry*.

If any damage shall happen, by reason of the insufficiency of the flat, or the non-attendance of the ferryman, the person injured may have and maintain an action against *Carlton Wellborn* for the amount of the damage sustained.

AN ACT to alter and amend the Road-Laws of this State, approved the 19th of Dec. 1818, so far as relates to the Counties of Randolph and Jackson. And to exempt laborers on the line of the different Rail-road Companies of

this State from working on Public Roads, upon certain conditions herein specified.—*Approved Dec. 26, 1845.*

63. SEC. III. The hands employed as laborers on the line of the road of the different rail-road companies of this State, and liable to work on the public roads, be and they are hereby exempted from the performance of such work: *Provided*, that said companies shall pay to the proper overseers of roads, the sum of one dollar per day for each hand, where and while liable to work on the public roads.—[*See 68.*] .

How Railroad hands may be excused from work on Public Roads.

#### PRIVATE FERRIES AND BRIDGES.

AN ACT to authorize all persons whatever to establish Ferries and erect Bridges across water-courses or streams, on their own lands. And to define the terms upon which they may establish the same.—*Approved Feb. 22, 1850.*

64. SEC. I. *Be it enacted*, That from and after the passage of this act, all persons whatever who may be owner or owners of any lands through which a water-course or stream may pass, shall have full power and authority, to establish any ferry or ferries, bridge or bridges, across the same, on his, her or their own land, at his, her or their own expense. And shall have full power and authority, to charge such toll for crossing at the same, as he, she or they, may think proper; *Provided*, that he, she or they, shall not at any time increase the rates of toll at said ferry or bridge, without giving, at least, thirty days' public notice of such intention to increase said toll, before the increase shall take effect: *And provided further*, that in all cases when the owner or proprietors of any such ferry or bridge shall demand such rates of toll thereat as shall be deemed by any person, excessive and a public grievance, such person or persons shall have the right to apply to the justices of the inferior court of the county where the same may be located, specifying the ground or cause of the complaint. And it shall be the duty of the justices of the inferior court of the county where either bridge [*or ferry*] may be, to enquire into the matter, and if, in their opinion, the toll charged at any such ferry or bridge, is excessive, they shall have full power and authority to reduce the same to such prices as they may deem just and proper.

Owners of both banks may establish Ferry or Bridge.

How about increasing toll.

Excessive charges how to be remedied by the Inferi'r Court.

65. SEC. II. No person whatever shall be permitted to stop up or obstruct any ford on any stream, by the establishment of any ferry, the erection of any bridge, or otherwise, upon any public road; should they do so, he, she or they being thus guilty, shall be subject to indictment and punishment, for a misdemeanor, according to the laws of this State, now of force: *Provided further*, that should any person or persons be desirous to discontinue any ferry or bridge occupied by them, under the provisions of this act, he, she or they, shall be required to give public notice of such intention, by an advertisement posted on the court-house door of the county, for six months previous to discontinuance: *Provided*, nothing in this act shall be so construed as to interfere with any right conferred by any charter heretofore granted by the legislature, or by the order of any inferior court in this State.

Fords not to be obstructed.

Discontinuing Ferry or Bridge.

Chartered rights not to be disturbed.

SEC. III. All laws and parts of laws whatever, which militate against the provisions of this act, be and the same are hereby repealed.

AN ACT to amend the second section of an act entitled "an act to empower the Inferior Courts of the several Counties in this State, to order the laying out of Public Roads. And to order the building and keeping in repair of Public Bridges," approved December 4, 1799.—*Approved Dec. 26, 1851.*

66. SEC. I. *Be it enacted*, That from and after the passage of this act, so much of the second section of the before-recited act, be amended so as to include and embrace within its provisions, all uninclosed ground. And that whenever any person or persons shall feel him, her or themselves aggrieved by

Road through uninclosed land, to be paid for.



reason of any road being laid out through his, her or their uninclosed ground, he, she or they, shall be entitled to compensation, in the manner and after the form pointed out in said section of said act, for inclosed land, [see 2.] Any law to the contrary, notwithstanding.

AN ACT to exempt Ordained, or Licensed Preachers of the Gospel from working on Public Roads in this State.—*Approved Nov. 22, 1851.*

Ordained and  
Licensed  
Preachers, ex-  
empt.

67. SEC. I. *Be it enacted*, That from and after the passage of this act, no ordained or licensed minister, or preacher of the gospel, shall be compelled to work on any public road in this State. Any law or custom to the contrary notwithstanding.

AN ACT to amend the Road-Laws of this State, so far as concerns persons constantly employed in conducting transportation, and repairing track, upon the different Rail-roads in this State.—*Approved Jan. 22, 1852.*

Railroad  
hands exempt  
on certain  
conditions.

68. SEC. I. *Be it enacted*, That from and after the passage of this act, all persons constantly employed in conducting transportation, or repairs of track, upon any of the rail-roads of this State, shall be exempt from common road duty, upon the payment of four dollars per annum, for each and every person so employed; which sum shall be paid to the treasurer of the county in which such persons may be so employed; said fund to be applied to the purpose of keeping up the roads and bridges of such county.—[See 63.]

Fund how ap-  
plied.

SEC. II. That all laws and parts of laws repugnant to or militating against this act, be and the same are hereby repealed.

#### RAIL-ROADS.

AN ACT to declare the remedy of a Freeholder, through whose Land any of the chartered Rail-roads of this State shall pass.—*Approved Dec. 23, 1839.*

*Whereas*, several of the acts incorporating of Rail-road, or Rail-roads and Banking Companies, or Rail-road and Canal Companies, require that an Award, in certain cases, (where the right of way is disputed,) shall be made by Appraisers, without declaring whether such Award is to be made by a majority or the whole of such Appraisers, to the injury of Freeholders; for remedy whereof—

The Award of  
a majority of  
the Apprais-  
ers is suffi-  
cient.

69. SEC. I. *Be it enacted*, That in all cases where a majority of appraisers appointed, under the authority of any act or acts of incorporation, of any rail-road, or rail-road and canal company, shall agree and return their award, in conformity to the rules provided in such act or acts of incorporation, the same shall be deemed and held to be the award of the Appraisers. And such other proceedings, by appeal or otherwise, shall be had thereon, as are provided for in said act or acts of incorporation, severally.

AN ACT to define the liabilities of the several Rail-road Companies of this State, for injury to, or destruction of Live-Stock, or other property, by the running of Cars or Locomotives on their Roads; and to regulate the mode of proceeding in such cases. And to define their duties and liabilities to passengers; and to regulate the mode of proceeding thereon.—*Approved Dec. 30, 1847.*

Liability for  
stock injured.

74. SEC. I. *Be it enacted*, That the several rail-road companies of this State, shall be held liable in law, for any damage done to live-stock, or other property, (to the owner or owners thereof,) by running of the cars or locomotives of said companies on their roads, respectively.

Checks for  
baggage must  
be given.

75. SEC. VIII. Whenever the baggage of a passenger is received by the rail-road agent and put aboard a car, the conductor shall attach to each parcel

of baggage a metallic check, containing a number and the depot to which the baggage is to be transported; and at the same time, shall give a duplicate or duplicates to the owner of the baggage; for which baggage the company shall be liable, with treble damage for any detention the passenger may suffer by delay in recovering the same.—[*See 94.*]

Company liable for Baggage.

SEC. IX. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to prevent the running of all Freight Trains, upon all Rail-roads in this State, on the Sabbath-day.—*Approved Feb. 11, 1850.*

76. SEC. I. *Be it enacted*, That from and after the first day of March next, it shall not be lawful for any company or individual, to run any freight train, or any car carrying freight, upon any rail-road now existing, or that may hereafter be made, in this State, on the Sabbath-day. And any conductor, or other person, so running, or assisting in running any train or car, carrying freight, on the Sabbath-day, shall each be guilty of a misdemeanor; and on conviction thereof, each conductor shall be fined in a sum not exceeding five hundred dollars. And each other person, so as aforesaid offending, shall be fined in a sum not exceeding five hundred dollars.

Freight Trains not to run on the Sabbath-day. Penalty against Conductor.

Against other person.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to make it a Penal Offence for any Conductor, Fire-man, Engineer, or other Officer or Agent on, or managing or conducting any Rail-road in this State, to allow any Slave to travel on the same, except under certain circumstances.—*Approved Feb. 21, 1850.*

77. SEC. I. *Be it enacted*, That from and after the passage of this act, that any conductor, fire-man, engineer, or other officer or agent on, or conducting or managing any locomotive, tender, car or cars, on any rail-road in this State, who shall allow any slave to enter and travel on the same, in the absence of the owner, overseer or employer of said slave; or without a written permit from the owner, overseer or employer of said slave, *for that express purpose*, shall be guilty of a high misdemeanor, and on conviction thereof, in any court having jurisdiction of the same, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.

Slaves not to travel on Rail-road but under certain circumstances.

78. SEC. II. That if it shall be made to appear that any negro-slave shall escape on any rail-road car, locomotive or tender, without written permit from the owner, overseer or employer, such owner, overseer or employer, may recover by suit, in any court of competent jurisdiction, the amount of the value of the said negro, and the amount of all expenses of the suit incurred, from said rail-road company.

Liability of Company for Negro escaping.

AN ACT to define the liabilities of the several Rail-road Companies of this State, for injury to, or destruction of Live-Stock, killed or injured; or for destruction of or injury, or damage to property other than Live-Stock, by the running of Cars, Engines or Locomotives, or by the operation or use of any Machinery whatsoever, upon a Rail-road in this State; or damage done or caused to be done, by the Agent or Agents, person or persons in the employ of any Rail-road Company or Companies. To regulate the mode of proceeding, and define the costs in such cases; and to repeal conflicting laws; for remedy whereof.—[*Approved Feb. 20, 1854.*]

79. SEC. I. *Be it enacted*, That from and after the passage of this act, the several rail-road companies in this State shall be held liable, under the rules

Liability for damage to Live Stock, etc.



herein-after prescribed, for any damage done to live-stock, or other property, (except for the assessment of damages for the right of way,) to the owner or owners thereof, by the running of cars, locomotives or other machinery upon their roads, respectively; and for damage done by any person or persons in the employ or service of such rail-road companies; and for damage done by any such company, by any means whatsoever.

Notice must  
given.

What the  
notice must  
contain, and  
how served.

80. SEC. II. That any person whose stock has been or may be killed, wounded or injured, or whose property has been destroyed or damaged (except as before excepted) by the running of any cars, engines, locomotives or other machinery used by a rail-road company on any rail-road; [or] by any act done by any person or persons in the employ of a rail-road company, or the officers, agents, engineers or conductors of any such company, to serve with a written notice, describing the kind of stock killed, crippled or injured, and the particular kind of property damaged or destroyed. Which notice shall contain a statement of the time and place, as near as can be ascertained, when and where the damage was done; and may be served, personally, upon any employee of such company, at any place where such officer or agent in the employ or service of such company may be found, at least three days previous to the day of trial; or by leaving a copy of such notice at the residence of such employee, five days previous thereto; and which notice shall be served at any time within fifteen days after the happening of the injury complained of, and not after; which service shall be deemed and held as sufficient notice to such company to authorize the court to proceed to give judgment as in cases of debt. That a notice, in substance and form as follows, (subject to such alterations and additions as the circumstances of the case may require,) shall be deemed sufficient:—

Form of the  
Notice.

STATE OF GEORGIA, { To the South-Western Rail road Company—  
Houston County. } Greeting.

You are hereby notified, that within the last fifteen days, to wit: on the *first* day (or night) of the *present month, May*, you damaged the subscriber by killing (or destroying, as the case may be,) [*here mention the particular damage done, and the kind or species of property injured or destroyed, belonging to him or her,*] by the running of a car, engine, (or locomotive, or other machinery,) on your Road. And desiring that the amount of damages may be legally assessed, you are hereby required, by agent, or attorney, or in person, to appear at the Justices' Court-Ground, in the *fiftieth* District, G. M. (inserting the number of the District in which the damage was done) by ten o'clock A. M., on *Thursday* next, then and there to show cause (if any exists,) why the damage shall not be assessed, according to law. Damages not exceeding thirty dollars. This *May* 10, 1859.

JOHN DOE.

Damages not  
over \$30.  
Justice must  
attend and  
[try the case.  
Plaintiff may  
be a witness.

Effect of judg-  
ment.

That in all cases the plaintiff shall state in his notice, that the damages do not exceed thirty dollars. The justice of the peace in the district shall attend at the court-ground in the district, at the time specified in the notice, hear the evidence produced, determine the amount of damages and enter up judgment therefor, with costs. And when a plaintiff shall be unable to procure testimony to establish any material fact in the investigation, he may give testimony himself, as any other witness, first being sworn, that he cannot establish the fact necessary to make out his case, except by his own oath. A judgment entered up under the provisions of this section, by the justices of the peace,



shall be final and conclusive between the plaintiff and the rail-road company, touching the particular matter for which such judgment may be rendered, except as herein-after provided for, on appeal. The justice of the peace shall forthwith issue his execution in favor of the plaintiff against the defendant, for such damages as may have been assessed, with all the costs which may have accrued; which shall be directed to all and singular the Sheriffs and Constables of the State of Georgia, and may be levied and executed by any levying officer in any county of this State, where property may be found.

Execution shall issue.

Execution how directed and levied.

Appeal how made.

81. SEC. III. That the rail-road company, by its officer, agent or attorney-at-law, may at any time, after said judgment is rendered, and before a sale under the execution, enter an appeal, by filing with the justice of the peace, or levying officer, an affidavit that the amount of such judgment, or verdict, is to the best of his belief, not justly due to the plaintiff; whereupon, and on the payment of all costs, the said justice of the peace and sheriff [or constable] shall return to the clerk of the superior court of the county where the suit commenced, all the papers in their hands, and also, said affidavit. And the said court shall proceed to try said cause, in the same manner and under the same restrictions, as other appeal causes are tried, and award judgment and execution accordingly.

Papers to be returned to Superior Court, and cause tried as other appeal cases.

82. SEC. IV. That when a sheriff or constable shall levy an execution, issued under the provisions of the foregoing sections, upon property of the defendant, he shall advertise the same, for at least fifteen days, in some public gazette, (published weekly, on the line or at the terminus of said road,) in this State, and to proceed to sell the same for the satisfaction of such damages and costs. And such levying officer shall be entitled to a commission of ten per cent. for selling, besides two dollars for advertising, and one dollar for the levy.

Levying officer must advertise and how.

Costs.

83. SEC. V. That the cost, in all cases, shall be the first money paid, and after satisfying the plaintiff's demand, the excess, (if any,) arising from such sale, shall be subject to the order of the president of such company.

Money how disposed of.

84. SEC. VI. That nothing in this act contained, shall prevent a rail-road company, or the agent, or employee of such company, (who may be served with a notice of a damage done,) from tendering to the owner of such property damaged or destroyed, a reasonable amount, as a compensation for the damage so done, which if accepted by the party aggrieved, shall stop all further proceedings; but the injured party may or may not accept the sum tendered, and if he refuse and proceed to investigate the matter, under the provisions of this act, and shall fail to recover a larger amount than the sum so tendered, he shall pay all costs, and the rail-road company shall be discharged from further liability, by paying the damages assessed. And in all cases, when an injured party shall claim damages, exceeding thirty dollars, suit shall be brought in the superior or inferior court, by written notice, served upon the nearest agent, or officer, of said rail-road company, or by leaving a copy at their place of doing business, twenty days before court.

Company may tender satisfaction, after Notice served. [The statute contemplates an adjustment without suit, between the parties; right of tender does not exist at the trial.]

Sums over \$30 sued for in Superior and Inferior Court.

85. SEC. VII. That in all cases where any species of live-stock, or other property, shall be killed, injured or destroyed, by the running of an engine, locomotive, car, or other machinery, upon any rail-road in this State, which belongs to partners or joint owners, or when the owner is absent, any one of the partners or joint owners, or any authorized agent of the absent owner, shall have power to institute suit, in his own name, against the rail-road company liable for the damages, and any verdict or judgment obtained against such company, by a part owner, or agent of an absent owner, shall be a full and complete bar to the recovery of any other part owner, or the absent owner, in respect to the particular matter investigated; and that the cost shall be taxed,

Partner, Joint Owner and Agent of absent Owner, may maintain suit.



as provided in this act, and in all other cases of debt. And all laws militating against this act, be and the same are hereby repealed.

AN ACT to authorize the several Rail-road Companies of this State to establish through rates for the transportation and conveyance of Produce, Merchandize and Passengers, over their respective routes, jointly.  
—*Approved Jan. 20, 1852.*

Thro' Rates may be estab- 86. SEC. I. *Be it enacted*, That from and after the passage of this act, lish'd by Com- it shall be lawful for any two or more of the rail-road companies of this panies, pro- State, to establish and agree upon a through rate, or tariff of freights, for vided the the transportation and conveyance of produce, merchandize and passengers, charge be not over their respective roads, jointly; and to levy and collect such rates or greater than tolls for such transportation, as they may be, by law, entitled to on their the charge on respective roads: *Provided*, that the charges or rates for such joint trans- each Road. portation over two or more of said roads, shall in no case, be higher than the established local rates of said companies, when added together.

Publication must be made of such Rates. 87. SEC. II. That whenever any two or more of said companies shall establish such through rates, as aforesaid, they shall publish the same in one or more of the public gazettes of this State; and such publication shall be evidence of the joint undertaking of said companies, so to transport produce, merchandize and passengers, and they shall be held to the same obligations and liabilities for such joint business, as they are by law, held for their local and individual business.

W. & A. R. R. may be a party. 88. SEC. III. That said companies, or any of them, may make and agree upon through rates, as aforesaid, with the authorized officers of the Western and Atlantic Rail-road.

SEC. IV. That all laws or parts of laws conflicting with this act, be and the same are hereby repealed.

AN ACT to prescribe certain Rules and Regulations to be observed by the several Rail-road Companies in running Engines upon their respective tracks, and annex a penalty for the violation of the same.—*Approved Jan. 22, 1852.*

Sign-boards at crossings of Public Roads. 89. SEC. I. *Be it enacted*, That the several rail-road companies in this State, shall be required, by the first day of February next, to prepare and put up, in a substantial manner, sign-boards, parallel with their track, and over each and every public road, where the same crosses the rail-road track, and sufficiently high to allow the passage under them, of any vehicle commonly used upon said roads, and to have painted, in large letters, on each side thereof, "Look out for the Engine when the Whistle blows."

Whistle to be blown and speed check'd. 90. SEC. II. That each of said companies shall cause to be fixed on the line of their track and at the distance of two hundred yards from the centre of each public road, on each side of said road, a post; and the engineer shall be required, whenever he shall arrive at either of said posts, to blow the whistle of the engine until the engine arrives at the public road; and shall moreover, be required to check the speed of said engine, so as to enable him to stop said engine, should any person or thing be crossing said track, on said public road.

Penalty for not complying with the requirements of the first section of this act. 91. SEC. III. That should any company fail or neglect to put up said sign-board and posts, as required by the first section of this act, the president and directors of such company, shall each be guilty of a misdemeanor, and upon indictment and conviction thereof, in the county where such failure occurs, shall each be subject to a fine of not less than five hundred nor more than one thousand dollars.

92. SEC. IV. That upon the failure of any engineer to comply with the



requisitions of this act, he shall be guilty of a misdemeanor, and upon indictment and conviction thereof, in the county where such failure occurs, he shall be punished by fine or imprisonment, or both, at the discretion of the court. And the company in whose employ said engineer shall be engaged, shall be held accountable for the payment of said fine. Penalty against Engineer for neglect of duty, in this respect.

93. SEC. V. That nothing in this act shall be so construed as to prevent any rail-road company from being liable in an action for damages, at the instance of any person or persons injured, or whose property may be injured by the running of their engines and cars, upon their respective roads. And that all laws and parts of laws militating against this act, be and the same are hereby repealed. No construction of this act to discharge R.R. Compa'y from general liability.

AN ACT compulsory upon the several Rail-roads of this State, to give Checks for Trunks and Baggage, in separate pieces, when required, at any of the stations of said Roads, and to the point of destination of the Passenger, under certain penalties.—*Approved Dec. 22, 1857.*

94. SEC. I. *Be it enacted*, That it shall be the duty of all rail-road companies, to cause their conductors, agents or employees, to be provided with checks, so as to check all trunks or separate baggage of passengers, from station to station, on their roads, when required. And it shall be the duty of the conductor of every passenger train, to cause, upon application to him, all trunks and baggage to be checked from any station to any point of destination on their road, or any road running under the control of the company of which he is conductor, under a penalty of fifty dollars for every failure to comply promptly, with such requisitions; to be recovered in the justices' court of the district where the demand for [the] check was made, out of the company upon whose conductor the demand was made.—[*See 75.*] Checks to be given for Baggage, from station to station, etc.  
  
Penalty for neglect, and how recov'd.

AN ACT to make penal and to punish any unlawful intrusions upon, or interference with, or molestations of Rail-roads, in this State.—*Approved Dec. 25, 1837.*

*Whereas*, the safety of Passengers travelling on rail-roads requires the strictest penal prohibitions to unauthorized person, in any manner, interfering with such Roads, or their appurtenances; or placing obstructions upon, or moving, touching or altering the gates, rails, switches or other appendages of said Roads.

95. SEC. I. *Be it enacted*, That if any person or persons shall intrude upon any rail-road in this State, constructed by any chartered company, or any part thereof, contrary to the will of the company, owning said road, the person or persons so intruding, shall and may be indicted as for a misdemeanor, and upon conviction fined or imprisoned, or both, at the discretion of the court. Intrusi'n upon R. R. how punished.

96. SEC. II. If any person shall wilfully and maliciously destroy, or in any manner hurt, damage, injure or obstruct; or shall wilfully and maliciously cause, or aid and assist, or counsel or advise any other person or persons to destroy, or in any manner, to hurt, damage or injure, or obstruct any such rail-road; or any branch thereof, or any bridge connected therewith, or any vehicle, edifice, right or privilege granted by charter, and constructed for use, under authority thereof; or if any unauthorized person or persons, shall turn, move, or in any manner, interfere or meddle with any gate, switch, sideling or or other appurtenance to any such rail-road, such person or persons so offending, shall and may be indicted, and on conviction, shall be imprisoned, at hard labor, in the penitentiary, for a term of years not less than four nor longer than eight; and shall further be liable for all civil damages occasioned by any such act. And if death to any passenger, or other person, on said rail-road, shall ensue from any such act, such act or offence shall be deemed and held to be murder, and shall be punished accordingly. Destroying, injuring or obstructing R. R. to be punish'd by imprisonment in the penitentiary.  
  
Death caused on R. R. murder.



AN ACT to define the liability of the several Rail-road Companies of this State, for injury to persons or property ; to prescribe in what Counties they may be sued, and how served with Process.—*Approved March 5, 1856.*

Where Rail-road Comp'y may be sued.

97. SEC. I. That the several rail-road companies of this State, shall be liable to be sued in any county in which the cause of action originated, by any one whose person or property has been injured by them, their officers, agents or employees, in or by the running of their cars or engines, for the purpose of recovering compensation in damages, for such injuries ; and service of a copy of the declaration and process, by the proper officers, on any officer or depot-agent of such company, residing in the county in which any such suit may be brought, or by leaving the same at the most notorious place of abode of any such officer or agent, shall be deemed and adjudged to be sufficient service of notice to any such company.

Liable for carelessness of employees, etc.

98. SEC. II. That in all cases where the person, or an individual, has [*been*] or may be injured ; or the property of an individual has [*been*] or may be injured or destroyed by the carelessness, negligence or improper conduct of any of said companies, their officers, agents or employees, in or by the running of any of their cars or engines, they shall be liable to pay damages for the same, to any one so injured, or whose property may be so injured or destroyed, notwithstanding any by-laws, rules or regulations or notices made, passed or given, by any of said companies, limiting their liability.

Liable for negligence, etc., to injured employee, etc.

98†. SEC. III. That the several rail-road companies, in this State, shall be liable to pay damages to any officer, agent or employee of any such company, who may be injured while in the service of any such company, by the carelessness, negligence or improper conduct of any of said companies, or of any of the other officers, agents or employees of said companies, by the running of the cars or engines of any of said companies.

Who may sue when person is killed.

99. SEC. IV. That if any one shall be killed by the carelessness, negligence or improper conduct of any of said rail-road companies, their officers, agents or employees, by the running of the cars or engines of any of said companies, that the right of action to recover damages, shall vest in his widow, if any ; if no widow, it shall vest in his children, if any ; and if no child or children, it shall vest in his legal representatives.

SEC. V. [Repeals conflicting laws.]

AN ACT to define the duties of all Rail-road Companies in this State, in reference to Bills and Freight-Lists ; and for other purposes.—*Approved March 5, 1856.*

Freight Bills, what must specify.

100. SEC. I. That all freight-bills, or freight-lists, charged against or to be collected out of any person for whom a rail-road shall carry freight in this State, shall contain the items of freight charged in said bills or freight-lists, by some certain and specific description, before they shall be collectable.

#### PLANK ROADS, ETC.

AN ACT to authorize the incorporation of Joint-Stock Companies for the construction of Macadamized, Graded or Plank-Roads.—*Approved Feb. 23, 1850. [See 110.]*

Three or more persons may be incorporated by the I. C. to build Macadamized

97\*. SEC. I. *Be it enacted*, That any number of persons, not less than three, who by articles of agreement, in writing, have associated, or shall associate, according to the provisions of this act, under any name assumed by them, for the purpose of making a macadamized, graded or plank-road, and who shall comply with all the provisions of this act, and first obtain the

consent of the inferior court of the county in which such road is to be made; shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them; and have power and authority to make, construct and maintain such macadamized, graded, or plank-road or roads, as they shall be authorized to make by the said court, as is herein-after prescribed: *Provided nevertheless*, this charter shall not infringe upon the rights of any charter heretofore granted by the legislature of Georgia. and Plank  
Roads.  
  
Former Char-  
ters protected.

98\*. SEC. II. The persons thus associated, shall in their articles of association, distinctly set forth the kind of road which they propose to make, and the commencement and the terminus thereof, and shall cause an abstract of their said articles of association to be published in one or more newspapers printed in the vicinity, giving notice that application will be made to the inferior court of the county in which said road is to be made, at least four weeks before such application. Articles of  
association  
must be pub-  
lished before  
applicati'n for  
incorporation.

99\*. SEC. III. Whenever persons thus associated shall make application to the inferior court of any county or counties, in which they propose to make a road, as aforesaid, the said court, if in their opinion the making of such road will be for the public good, shall order the said articles of association to be recorded. And such order shall vest in the said associates, their heirs, successors and assigns, all rights, powers and privileges of a corporation, with authority to construct and maintain such road: *Provided*, that nothing herein contained shall authorize banking privileges. Order of rec-  
ord by the  
Court.  
  
No banking  
privileges.

100\*. SEC. IV. When the associates aforesaid, shall have obtained the order of the court as aforesaid, they or a majority of them, may proceed to organize their company by electing not less than three, nor more than seven directors, who shall be charged with the management of the affairs and business of the company, and whose powers and duties, or term of service, shall be prescribed in the articles of association. Directors,  
their powers  
and duties.

101. SEC. V. In all cases where land, timber or other materials necessary for the construction or repair of said road, cannot for want of agreement between the parties, be purchased from the owner or owners thereof, the same may be taken at a valuation to be made by three disinterested persons, to be appointed by the inferior court of the county in which the same may be; who shall notify the parties of the time and place of making such valuation, by writing, or by publication in some newspaper published in the vicinity. Disputes  
about Timber  
how settled.

102. SEC. VI. Before making such valuation, the persons thus appointed, shall subscribe the following oath: "I, A B, do solemnly swear, that I will render a true verdict, according to the circumstances of the case, now submitted to me; taking into consideration the benefits arising to the owner or owners of the property, by the construction of the said road, in his or her neighborhood, as well as the damages done thereby." Oath of Ap-  
praisers of  
Timber.

103. SEC. VII. The award of the valuers aforesaid, shall be certified by them to the inferior court, and shall operate as a judgment against the parties, and may be enforced by the order of said court: *Provided*, that either party may have an appeal, to be tried at the next term of the superior court of the county. And these proceedings, when concluded, shall vest in the company the fee-simple, if it be land: *Provided further*, the said company may at any time within twenty days after the rendition of final judgment, abandon the right to the property condemned, by filing a notice to that effect, in the office of the clerk of the said court, in which case the judgment shall be void, except as to costs. Award to be  
enforced.  
  
Appeal al-  
lowed.  
  
Company may  
abandon the  
right of prop-  
erty.

104. SEC. VIII. The said road and the appurtenances thereto, shall not be subject to be taxed higher than one per centum, on its net annual income. Tax on Road.



- Injuries to Road how punished. 105. SEC. IX. Any person injuring the property of said company, or who shall throw earth, stones, trees, logs, rubbish, or any other matter or thing whatsoever, upon said road or its appurtenances; or shall dig up, or in any manner destroy said road, or any of its bridges, gates, houses, or other appurtenances or appendages of the same, shall be punished by indictment for a misdemeanor, and on conviction, may be fined and imprisoned, at the discretion of the court. And shall also, be liable for three times the amount of such damages as may be occasioned thereby, to be recovered by action, at the suit of said company, or of any person aggrieved, in any court having jurisdiction.
- Damages may be recovered.
- Toll-gates erected. 106. SEC. X. Said company shall have power to erect such number of toll-gates upon said road, and at such places, as they may judge best and most convenient, for the collection of toll; and may charge and collect such rates of toll, for the use of their said road, as they may, from time to time, fix and establish: *Provided nevertheless*, such rates of tolls shall be published, in such manner, that the same may be known: *And provided also*, that the said inferior court may, at any and at all times, require the said company to make an exhibit of the cost of making and keeping the said road in repair; and if it shall appear that the receipts from tolls have been more than sufficient to pay a dividend of fifteen per cent. on the cost of construction, over and above the repairs of said road, then the said court may reduce the rates of toll so as that the dividends shall not be greater than fifteen per cent. per annum on the cost of construction, and over and above the repairs of said road, after the payment of incidental expenses: *Provided*, that said court shall not reduce the rates of toll below the following schedule, on animals and articles, as herein set forth:—On neat cattle, one quarter of a cent per mile, per head; on hogs, one-eighth of one per cent. per head, per mile; on sheep and goats, one-sixteenth of one per cent. per head, per mile; on loose horses, one-half cent. per head, per mile; on saddle-horses, one cent per mile, per head; on carts or wagons, drawn by one horse, mule or other animal, one and a quarter cents each, per mile; on road-wagons, drawn by two animals, three cents per mile; on wagons drawn by a greater number of animals than two, one and a half cents per mile, for each additional animal; on one-horse private pleasure carriages, two cents per mile; on private pleasure carriages, drawn by a greater number of horses, two cents per mile, for each additional animal.
- Rates to be published. Powers of the Inferior Court in regulating Tolls.
- Not below certain Rates.
- Toll-Bridges may be erected. 107. SEC. XI. Said companies are authorized to construct toll-bridges, in connection with said road or roads, over water-courses, and charge such rates of toll as may be agreed upon, (at or before the erection of said bridge or bridges,) with the inferior court of the county wherein the same may be located.
- Fee-simple in Company. 108. SEC. XII. The road authorized and granted by this act, shall vest in said company, their heirs and assigns, in fee-simple.

AN ACT to prevent evading the payment of Tolls on Plank-Roads in the State of Georgia.—*Approved January 22, 1852.*

- Persons failing to pay Toll, liable for triple Toll; to be collected by attachment. 109. *Be it enacted*, That if any owner, carrier, or other person, in charge of any vehicle, live stock, or other thing or things, shall pass by any toll-gate, or other place appointed for taking tolls, on any plank-road in the State of Georgia, without paying to said plank-road companies, the tolls due to said companies, established by authority of law. That in every such case the person or persons so offending, shall forfeit and pay to such plank-road company, triple the usual tolls; which may be collected by the president of said company, or any one authorized to collect tolls, by attaching the property of such person or persons, before any court having jurisdiction of the same: *Provided*, that the defendant or defendants shall have the right
- Defendant may replevy.



to replevy said property, and make special defence, under the same regulations as is usual in attachment cases, in this State; *Provided*, there is some one at the toll-gates to receive the tolls. Toll-gatherer.

That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to authorize the incorporation of Joint Stock Companies, for the construction of Macadamized, Graded or Plank-Roads," passed on the 23d day of February, 1850.—*Approved Feb. 18, 1854.*—[*See 97\*, 98\*, etc.*]

110. SEC. I. *Be it enacted*, That from and immediately after the passing of this act, if any person or persons, except foot-passengers, shall travel on any road belonging to any corporate body, (authorized by the said act to which this is amendatory,) or use the same, or any part thereof, for the purpose of leading, driving, or in any manner, conveying any live-stock, such as horses, cattle, sheep, goats or hogs; or for conveying any corn, cotton, fodder, hay or other agricultural products; wood, lumber, shingles, or any other article or articles whatever; or for wagons, carts, pleasure-carriages or other vehicles, either loaded or empty, either by himself or themselves, or by his or their agents, servants or slaves, without paying the tolls authorized and required to be paid by such company or corporation, such person or persons, so offending, shall forfeit and pay to said company or corporation, the sum of ten dollars, for each and every such violation of this act; to be recovered in an action of debt, as assessed damages, before any justices' court in the county where such violation may happen or take place. But this act shall not apply to cases of crossing said road, or using the same so far as they have been constructed on or over a public or neighborhood road, without opening another to the extent taking [*taken*,] or leading [*leaving*] sufficient space on such public or neighborhood road, for passage. No person to travel on Roads without paying Toll. Penalty for so doing.

[NOTE.—The evident meaning of this sentence is, that no toll is to be charged for crossing a Turnpike Road, etc; or for passing on such a Road, so far as it may form a part of a Public or Neighborhood Road; where there is no other way to pass.] No Toll for cross'g Plank-Road.

111. SEC. II. That no plank-road shall be so built as to obstruct any public road in this State. Any plank-road, if so built as to violate this provision, shall incur a forfeiture of its charter; nor shall any plank-road be entitled to exact toll for the mere passage through its gates, of either persons, stock, vehicles or freights, when such persons, stock, vehicles or freights do not travel over any portion of such plank-road. Note by the Compiler.  
P. R. not to obstruct public road.  
Charter forfeited.  
No Toll for passing thro' Gate only.

#### PRIVATE WAYS.

AN ACT to authorize the Justices of the Inferior Courts of the several counties in this State, to grant the right of Private Ways, in certain cases.—*Approved Dec. 20, 1834.*

112. SEC. III. When said return is made, it shall be the duty of said court, to grant such order to the applicant as they may think proper; so as to allow to him, her or them, a way to pass out and in, from and to, his, her or their farm, or place of residence. Order for Private Way to be passed.

113. SEC. IV. If any person or persons shall violate the provisions of this act, by obstructing in any manner, any road or way, marked out as herein-before directed, he, she or they, shall be subject to indictment and fine, in the superior court of the county, in a sum not less than one dollar per day, for each day such obstruction shall continue in said road.—[*See next Act.*] Obstructions, how to be indicted for.



AN ACT to prescribe the mode of laying out Private Ways; and for other purposes.—*Approved Jan. 17, 1852.*

Private Ways,  
how laid out  
and granted.

114. SEC. I. *Be it enacted*, That any person desiring a private pass-way over the land of another, may upon twenty days' notice to the owner or owners of the lands through which the same is designed to pass, apply to the inferior court of the county in which the lands are situated, (either at the regular term of said court, or at any time said court shall meet to transact county business,) to have five commissioners appointed, a majority of whom may act, to view and mark out said road, if in their judgment, the same shall be necessary. And it shall be the duty of said commissioners to lay out said road so as to do the least damage and to be of the least inconvenience to said land, consistent with the objects of said road.

Oath of com-  
missioners.

Return of  
commissioners  
may be con-  
troverted.

Which commissioners shall make their return within thirty days after their appointment; and before entering upon their duty, shall take and subscribe an oath, truly, faithfully and impartially, to discharge their duties. And when said report shall be made, it shall be lawful for any party in interest, to controvert said return; and the inferior court, in its discretion, may lay out such road as it may deem right and proper, without reference to said report; and which said road shall be opened at the expense of the party applying.

Damages how  
assessed.

Jurors how  
summoned,  
and when to  
meet.

115. SEC. II. That the person or persons through whose land said road may pass, may apply to the inferior court for the appointment of a jury to assess the damages sustained by laying out said road through his or their lands, and said court shall draw eighteen jurors from the grand-jury box, twelve of whom shall form a jury. And it shall be the duty of the clerk of the inferior court, to certify the names of such jurors to the sheriff, who shall notify such jurors to meet and view said road, which time of meeting shall not exceed twenty days from the time of his (the sheriff) receiving said notice; and he shall give to the jurors eight days' notice of the time and place of meeting.

Oath of Jury.

Verdict of the  
Jury, how re-  
turned.

And it shall be the duty of the sheriff to attend said jury and to administer to them the following oath—"You do solemnly swear that you will well and truly determine the damage sustained by *A B*, from the private way of *C D*, passing through his lands, and a true verdict give—so help you God." Which verdict shall be delivered to the sheriff, and with all the papers in the cause, shall be delivered, by him, to the clerk of the inferior court; and upon the payment of said damages and all costs, by the party applying, the right to said private way, shall vest fully in him and his heirs and assigns.

Amount of  
Costs.

116. SEC. III. That the costs of this proceeding shall be the same with the costs for similar proceedings had, in laying out a public road.—[*See next Act.*]

SEC. IV. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to prescribe the mode of laying out Private Ways, and for other purposes; approved January 17th, 1852, so far as to authorize and require Sheriffs and [*their*] Deputies, to superintend the opening and laying out Private Ways.—*Approved Feb. 20, 1854.*

Sheriff to  
mark out and  
open Private  
Way, etc.

117. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, whenever any person shall apply to any inferior court, in any county in this State, for a private way or road, through any enclosed or unenclosed lands, and to have commissioners appointed to mark out said road, and damages shall be assessed, in manner and form as are provided in the first and second sections of the above-recited act, and the cost and damages shall be paid; then it shall be the duty of the said commissioners, or the clerk of the inferior court, as the case may be, to make out and sign a writ, directing the sheriff of

said county, or any lawful deputy, to superintend the laying out, opening and marking of said private way, or road; and empowering also, said sheriff, or his lawful deputy, to remove all obstructions to the laying out, marking out and opening of said private way, or road: *Provided*, nothing in this act shall be so construed as to extend to the counties of Bibb, Murray, Henry, Habersham, Rabun, Talbot, Lumpkin, Warren, Whitfield, Twiggs and Dade.—[*See next Act.*]

Certain Counties exempt.

AN ACT to alter and amend an act to prescribe the mode of laying out Private Ways, and for other purposes; approved January 17, 1852.—*Approved Feb. 16, 1854.*

118. SEC. I. *Be it enacted*, That from and after the passage of this act, when a private road shall be granted in accordance with the first section of the act above-recited, and the person or persons through whose land said road may pass, shall neglect or refuse to apply to the inferior court for the appointment of a jury to assess the damages sustained by the laying out said road, then it shall be lawful for the person or persons applying for said private road, to apply to the inferior court for the appointment of a jury, to assess the damages resulting from the opening of said road; and it shall be the duty of the inferior court to draw a jury for the purpose aforesaid, upon application, in the same manner as is prescribed in the second section of this [*the*] act of which this is amendatory.

Amends the act of 1852.

Owner neglecting to apply for a Jury, opposite party may.

119. SEC. II. That in the event of twelve of the jurors so drawn, for the purpose aforesaid, failing to meet at the time and place appointed for the assessment of the damages, then it may and shall be the duty of the sheriff, or his deputy, to summon *tales* jurors, from the vicinage or neighborhood, to supply the places of the absent jurors, and the verdict of such jury, when rendered, shall have the same force and effect, as if rendered by the original pannel.—[*See next Act.*]

*Tales* Jurors may be employed.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to prescribe the mode of laying out Private Ways, and for other purposes;" approved January 17th, 1852; and for other purposes herein named.—*Approved Feb. 18, 1854.*

120. SEC. I. *Be it enacted*, That from and after the passage of this act, any person desiring a private way over the land of another, for the purposes of hauling timber to any bluff or place of landing, on the Oconee, Ocmulgee and Altamaha rivers, or the creeks tributary thereto, whereon the business of rafting timber is carried on, may be entitled to have the same, under the provisions and regulations, and by the mode of proceedings, prescribed by an act entitled "an act to prescribe the mode of laying out Private Ways, and for other purposes; approved January 17, 1852."

Right of Way to haul Timber, etc., may be secured.

121. SEC. II. That nothing in this act shall be so construed as to make any person seeking a right of way over the land of another, for the purpose aforesaid, to secure to himself any rights or privileges, that may so conflict with the rights of the owner of the land, as to prevent his fully enjoying the benefits of any way or landing he may have established for his own use: *Provided*, that where there is but one bluff or place of landing upon a tract or lot of land, whereat the owner of the land has established a landing, it shall not be lawful for said owner to apply said landing to his own use, to the exclusion of others; where it shall be made fully to appear, that the interests of said owner, for all necessary purposes of rafting, will not be affected by the admission of others to the use of said landing.

Not to prejudice Owner of the Land.

There being but one Landing, Owner not to exclude others.

122. SEC. III. That for the purpose of facilitating the business of rafting may order the

Inferior Co'rts



clearing out timber on said Oconee, Ocmulgee and Altamaha rivers, and the creeks tributary thereto, the inferior courts of the counties lying on and adjacent to said streams, in chambers, or at any term, regular or adjourned, be and they are hereby empowered to employ and exercise any means proper and lawful, and not in contravention of the principle, that private property shall not be taken for the public use, without making just and adequate compensation therefor, to the person from whom taken. And the powers of the said inferior courts shall extend to the ordering and directing, under such regulations as they may deem appropriate, the clearing out or removing obstructions in the creeks or streams, in their respective counties, capable of being used for rafting timber, subject herein to a due regard to the private rights of mill owners; and to ordering and directing matters that mill owners shall not be subjected to any damages, loss or inconvenience, from the exercise of the powers hereby conferred.

SEC. VII. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

#### RIVERS.

AN ACT to prevent persons throwing Ballast or Rubbish, or falling Trees, into the Rivers and Navigable Creeks, within this Province; and for keeping clear the Channels of the same.—*Approved April 7, 1763.*

[This Act has been superseded by the Act of 1765, and by various provisions respecting each River and Navigable Creek.]

AN ACT amendatory of the foregoing.—*Approved March 25, 1765.*

Throwing Ballast into Rivers, etc., forfeiture not exceeding 300 pounds.

123. SEC. I. *Be it enacted*, That from and after the passing of this act, if any master or owner, or any person acting as master or owner, of any ship or other vessel whatsoever, shall cast, throw out or unlade; or if there shall be cast, thrown out, or unladen from or out of any ship or other vessel, being or riding within any port, road, channel, river or navigable creek within this Province, any ballast, rubbish, gravel, earth, stone or wreck, but above high-water mark, (except as in the said act excepted;) every master or owner, or any person acting as such, as aforesaid, shall be deemed the offenders, and shall forfeit and pay for every such offence, a sum not exceeding 300 pounds sterling; to be recovered and applied as herein-after directed. And for the more speedy determination of offences against this act—

May be arrested, bound over or committed to Jail.

124. SEC. II. That information on oath being made of such offence before the chief justice, or one of the assistant justices of the general court of pleas, of this Province, the said chief justice and justices, or any or either of them, are hereby required and directed, forthwith, to issue his or their warrant, to apprehend the offender or offenders, and oblige him or them to find sufficient security for their appearance at the court to be holden for that purpose, and to abide the judgment thereof. And in case such offender or offenders shall neglect or refuse to find such security, it shall and may be lawful to and for the said chief justice and assistant justices, or any or either of them, to commit such offender or offenders to the common jail of Savannah, until the determination thereof. [The remainder of this section rendered obsolete by the constitution of 1798.]

Justice of the Peace may act.

125. SEC. III. If any offence shall be committed against this act, in any part of this Province, where information thereof cannot speedily be made to the chief or assistant justices of the general court, it shall and may be lawful for any justice of the peace, in the parish wherein the offence shall be committed, to receive such information, on oath, and to bind over the offender or offenders, and the informer or informers, with sufficient securities, to appear, as aforesaid. And the said justice is hereby required to transmit such information immediately, to the chief or assistant justices,

who are hereby required to proceed, in the same manner as if the same had been made before him or them.

126. SEC. IV. All forfeitures incurred by virtue of this act, shall be, one moiety thereof to the informer, and the other moiety thereof to his majesty [*the State,*] for the use of this Province; to be paid into the hands of the treasurer of this Province, and to be applied for clearing and keeping clear the rivers and navigable creeks, within the same. Forfeitures  
how applied.

NOTE.—A large number of Acts, have been passed for the purpose of protecting the Navigation and securing the free passage of Fish, in all the Rivers and many of the Creeks, of this State; these Acts do not properly fall within our arrangement, and are therefore omitted.

## CHAPTER XXIII.

### NAME CHANGED, ETC.

AN ACT to prescribe the manner in which the Names of persons may be changed, and persons born illegitimate may be made legitimate. And to carry into effect the provisions of the Constitution upon that subject. And also, to prescribe the manner in which Children may be adopted. —*Approved March 6, 1856.*

1. SEC. I. When any father of an illegitimate child shall be desirous of rendering such child legitimate, or of changing the name of such child, it shall be lawful for such father to petition the superior or inferior court of the county where he resides, setting forth the name, age and sex of such child, and also, the name of the mother, and that he recognizes it as his child; and when he wishes the name of such child to be changed, setting forth the name by which he wishes such child to be called. And upon such petition being presented and filed, it shall be the duty of said court to pass an order declaring said child to be legitimate, and capable of inheriting the estate of said father, in the same manner as if born in lawful wedlock. And also, declaring what shall be the name of such child; and said child from that time, shall be legitimate and known by said name. Illegitimate  
child how  
legitimized,  
and name  
changed.

2. SEC. II. The marriage of the mother and reputed father of an illegitimate child, and the recognition of such child as his, by the father, shall render the child legitimate. Marriage of  
Parents legiti-  
matizes child.

3. SEC. III. Any person desirous of adopting a child, so as to render it capable of inheriting his or her estate; or to change the name of such child, may present his or her petition to the superior or inferior court of the county where he or she resides, setting forth the name, age, sex and who is the father of the child; or if no father, who is the mother, and that said father or mother is willing and consents. And if said child has neither father or mother, then the consent of no person shall be necessary to said adoption. It shall be the duty of the court, upon being satisfied of the truth of the facts stated in said petition, to pass an order declaring said child to be the adopted child of such person, and capable of inheriting his or her estate; and also, declaring what shall be the name of such child. And from thence-forward, said child shall be known by said name, and shall be the child of the person so adopting it, as to all the legal rights of How child  
may be adopt-  
ed, name  
changed, etc.



such child and of the person adopting it, in the same manner and to the same extent, as if said child was the natural legitimate child of such person.—[See 5.]

Election Pre-  
cincts, how  
formed,  
changed and  
abolished.

4. SEC. IV. That upon the petition of any such person to the inferior court, praying the establishment, abolition or change of an election precinct or precincts, in any county, it shall be lawful for said inferior court to establish, abolish or change such election precinct or precincts, agreeably to the provisions now established by law.

SEC. V. [Repeals conflicting laws.]

NOTE.—How the fourth section of the above Act came to be inserted where it is, the Compiler is at a loss to determine; it certainly does not belong there. The title of the Act indicates no such subject-matter; the section is foreign to the objects of the Statute, and its constitutionality doubted. The section must belong to some other Act, but the Compiler has no discretion, for so he found the law written, on page 261 of the authorized Compilation for 1855-6.

AN ACT to amend the third section of an act entitled “an act to prescribe the manner in which the Names of persons may be changed; and persons born illegitimate may be made legitimate; and to carry into effect the provisions of the Constitution upon that subject. And also, to prescribe the manner in which Children may be adopted;” approved March 6, 1856.—*Approved Dec. 10, 1858.*

Adopting  
Child, or  
changing  
Name, how  
perfected.

5. SEC. I. *Be it enacted*, That the third section of the above-recited act, shall be amended as follows—That any person desirous of adopting a child, so as to render it capable of inheriting his or her estate, or to change the name of such child, may present his or her petition to the superior or inferior court of the county where he or she resides, setting forth [*the*] name, age and sex of said child, and who is the father of the same; and if no father, who is the mother, and that said father or mother is willing and consents; and if said child has neither father or mother, then the consent of the nearest of kin shall be obtained, if to be found; and if not to be found, then the person wishing to adopt said child, shall give public notice, in some public news-paper having general circulation, of his or her intention of presenting his or her petition to said superior or inferior court, at least six months before the sitting of said court. And at the expiration of the six months, then if there be no objection filed in said court, to said petition, it shall or may be the duty of said court, upon being satisfied of the truth of the facts stated in said petition, to pass an order declaring said child to be the adopted child of said person, and capable of inheriting his or her estate; and also, declaring what shall be the name of said child. And from

Legal rights of  
adopted Child.

thence-forward said child shall be known by said name, and shall be the child of the person so adopting it, as to all the legal rights of such child and of the person adopting it, in the same manner and to the same extent, as if said child was the legitimate child of such persons; except so far, however, that in the event said child should die without marriage or children, then in that event, the property of said child shall be subject to the law of distribution in this State, without reference to said adopting act:

Prop'ty when  
subject to dis-  
tribution.

*Provided*, that this act shall have no retrospective operation, or the provisions thereof apply in any respect whatever, to any case or cases in which the order of adoption was granted previous to its passage.

Does not ap-  
ply retrospec-  
tively.

SEC. II. [Repeals conflicting laws.]

### *Petition to legitimize illegitimate Child.*

STATE OF GEORGIA, }  
Houston County. }

*To the Superior Court of said County.*

The Petition of *John Doe*, of said County, sheweth, that he is the father of an illegitimate *Boy Child* of the age of *six* years, whose

mother is *Lucy Long*, of said County; that Petitioner desires to render said Child legitimate and capable of inheriting Petitioner's Estate, according to law. And Petitioner further sheweth, that said Child has hitherto borne the name of *Charles Long*, Petitioner prays the changing of said name to that of *Charles Doe*. And as in duty bound, Petitioner will ever pray, etc. This *May 1, 1859*.

JOHN DOE, *Petitioner*.

### *Order by the Court.*

It appearing to the Court by the Petition of *John Doe*, that he recognizes the son of *Lucy Long*, (an illegitimate of *six* years of age,) as his child, and that said Petitioner wishes to legitimatize said child, and render him capable of inheriting, according to law, his (Petitioner's) Estate. And it further appearing by said Petition, that said child has hitherto borne the name of *Charles Long*, and that said Petitioner desires said name to be changed to that of *Charles Doe*. It is, therefore, ordered, that the boy child of *Lucy Long*, (an illegitimate,) be, and he is hereby declared to be the legitimate son of *John Doe*, and capable of inheriting the estate of said *John Doe*, according to law. And it is further ordered, that the name of said child be, and the same is hereby changed to that of *Charles Doe*, according to said Petition.

### *Petition to Adopt Child.*

STATE OF GEORGIA, }

*Houston* County. }

To the *Superior* Court of said County.

The Petition of *John Smith*, of said County, respectfully sheweth, that he is desirous of adopting the boy child of *Sarah Jones*, named *John Smith Jones*, of said County, so as to render said child capable of inheriting Petitioner's Estate. That said child is of the age of *ten* years; the father of said child was *James Jones*, now deceased; that said child is the nephew of Petitioner; and that the mother of said child is *living*, and consents to *Petitioner's application*. Wherefore, Petitioner prays the passing of an order in conformity with the statute in such case made and provided. This *May 1, 1859*.

JOHN SMITH.

I consent to the above Petition. This *May 1, 1859*.

SARAH JONES.

### *Order by the Court.*

It appearing by the Petition of *John Smith*, of said County, that said Petitioner is desirous of adopting his nephew, *John Smith Jones*, so as to render said child capable of inheriting his, Petitioner's Estate. And it appearing that the mother of said child consents to said application, (the father being dead,) and the Court being satisfied of the truth of the facts stated in said Petition; therefore, it is ordered and declared that said *John Smith Jones*, son of *Sarah Jones*, of the age of *ten* years, nephew of Petitioner, is the adopted child of said Petitioner, and ca-



pable of inheriting his Estate, according to the statute in such case made.

NOTE.—It will be seen that in the foregoing proceeding, the case does not propose to change the name of the child, but simply to render it capable of inheriting the Estate of the Petitioner. If it be desired to change the name also, that must form a feature of the Petition and of the Order.

*Notice of Intention to Change Name (by an Adult).*

STATE OF GEORGIA, { All persons interested are hereby notified that  
Houston County. } I shall apply to the next *Superior Court*, to be held in and for the County aforesaid, on the *fourth Monday in October*, for the purpose of having my Name changed from that of *John Doe*, by which Name I have been heretofore known, to that of *Richard Roe*. This *July 1*, 1859.

JOHN DOE.

*Petition to Change Name.*

STATE OF GEORGIA, {  
Houston County. } *To the Superior Court of said County.*

The Petition of *John Doe* sheweth that he is of the age of *twenty-five* years; that he has resided in the State and County aforesaid, for the period of *five* years; that your Petitioner *was an illegitimate by birth*; that his mother's name was *Nancy Doe*, and that his father's name was *Richard Roe*. And your Petitioner sheweth, that he has always heretofore, borne the name of *John Doe*, and is now desirous of assuming and bearing the surname of his father, and hereafter to be known, named and called *John Roe*, and by that Name to be called and accepted, for all legal and equitable purposes whatsoever: wherefore Petitioner prays (having given the Notice required by law) that by the Order and Judgment of this Court, his Name of *John Doe*, as heretofore he has been known and called, may be changed to, and he hereafter be known and called *John Roe*. This *October 20*, 1859.

JOHN DOE, *in proper person.*

*Order and Judgment of the Court.*

STATE OF GEORGIA, {  
Houston County. } *Superior Court, October Term, 1859.*

Whereas, by the Petition of *John Doe* it is made known to the Court here, that he is desirous of changing his Name: that he has given the Notice required by law, in such cases, and no objection being filed to said proceedings: therefore, it is hereby ordered and adjudged, that the Name of the said *John Doe*, be and the same is hereby changed to that of *John Roe*, and that by the Name of *John Roe*, he be hereafter called, taken and known: *Provided*, that the said *John Roe* shall not be released, or in any wise discharged from any obligation or liability that he may have incurred while he bore the name of *John Doe*, but that said obligations and liabilities shall remain the same as if the Name of the said *John Roe* had never been altered or changed.

*A true extract from the minutes.*

[L. S.]

WILLIAM H. MILLER, *Clerk.*

## CHAPTER XXIV.

## BASTARDY.

AN ACT respecting Bastardy and other Immoralities.—*Approved Dec. 16, 1793.*

1. SEC. I. Any justice of the peace, in any county within this State, who of his own knowledge, or on information to him, on oath made, of any free white woman having a bastard child, or being pregnant with one, which it is probable will become chargeable to the county, he may thereupon cause a warrant [*to issue,*] under his hand and seal, directed to the sheriff or any constable of said county where the case may arise, and oblige the offender to be brought before him, to give security to the inferior court of the county, in the sum of £150, for the support and education of such child or children, till the age of fourteen years, or to discover on oath, the father of such bastard child; which being done, the said justice shall issue his warrant, in like manner, to bring before him the person sworn to be the father of such child or children, so born or to be born, who on refusing to give security for the maintenance and education of such child or children, until they arrive at the age of fourteen years; and also, the expense of lying-in with such child or children; boarding, nursing and maintenance, while the mother of such child is confined, by reason thereof, that then it may and shall be lawful for the said justice to bind over such delinquent, in a sufficient recognizance, to be and appear before the next superior court, which may be held in said county. And it shall be the duty of the attorney or solicitor-general, to prefer a bill of indictment, to be laid before the grand jury, to answer to such complaint as may be, then and there, alleged against him touching the premises.

Proceedings  
against the  
Mother.

Against the  
Father.

2. SEC. II. In case the woman who shall have been delivered, or is likely to be delivered, when brought before a justice, refuses to discover, on oath, the father of such child or children, so born, or to be born, or give such security to appear before the next superior court, to be held in and for the said county, and to give such security as may be, then and there, required of her by the said court, for the maintenance and education, as aforesaid, of the said child or children, that then it shall be lawful for the justice to commit her, in manner and form aforesaid, as pointed out by this act. And in case of her refusing to make known to the said court the father of such child, or give security, as aforesaid, that then it may and shall be lawful for the said court to imprison her, not exceeding three months.

Women who  
fail to comply  
with this act,  
to be committed  
to jail.

*And whereas,* it is highly injurious in civilized society, that men or women should live in adultery or fornication together—

3. SEC. III. That from and after the passing of this act, any man or woman who shall live together, in like manner, it shall be the duty of any of the neighboring justices, if within their knowledge, or upon information to them, on oath, that such man and woman do live in adultery or fornication, he shall thereupon, cause the said man and woman to be brought before them, or either of them, whose duty it shall be to bind them over to appear at the

Parties guilty  
of Adultery or  
Fornication,  
to be bound  
over.



next superior court; and the attorney or solicitor-general shall, then and there, prefer a bill of indictment against both, the man and woman.—[*For penalty, see Penal Code.*]

SUPPLEMENTARY to an act entitled “an act respecting Bastardy and other Immoralities.”—*Approved Nov. 26, 1802.*

*Whereas*, the act entitled “an act respecting Bastardy and other Immoralities,” passed on the 16th day of September, 1793, has been found ineffectual for the purposes therein intended; for remedy whereof—

Party may  
offer exculpa-  
tory testimo-  
ny.

4. SEC. III. *Provided nevertheless*, That nothing herein contained shall be so construed as to bar either party, when charged as aforesaid, from offering exculpatory testimony to the magistrate, in the first instance of the charge exhibited; who may exercise his discretionary power, after due inquiry being had, either to discharge or recognize both, or either of the parties charged, as aforesaid, in conformity to the intent and meaning of this act. Any thing to the contrary notwithstanding.

NOTE.—Some doubt has existed as to the application this section of the act of 1802, is to receive. Some suppose that it applies to the second section of the act of 1793, exclusively; others suppose that the section applies to the entire act of 1793, qualifying the whole of that act; this latter opinion the Compiler adopts, as the true and correct construction; therefore, in cases of Bastardy, the party charged as the father of the child, has the right, before the Magistrate, of “offering exculpatory testimony;” that is, he is authorized by this act to defend himself.

AN ACT to carry into effect the first section of an act entitled “an act respecting Bastardy and other Immoralities;” and the more fully to empower the Inferior Courts of the several Counties in this State, to provide for the maintenance of Bastard children.—*Approved Dec. 9, 1809.*

Bonds how  
recovered up-  
on and appro-  
priated.

5. SEC. I. From and immediately after the passage of this act, it shall be the duty of the inferior courts in the several counties of this State, when any child or children have or shall, become chargeable to the county, where bonds are taken, and to be hereafter taken, in conformity to an act passed the 16th day of December, 1793, as above recited, for the maintenance of bastard children, to institute an action on all bonds so taken, and to be hereafter taken, in manner aforesaid, and prosecute the same to judgment. And it shall be lawful for them to recover the full amount of said bond or bonds; which judgment or judgments shall remain open and be subject to be appropriated by the courts aforesaid, from time to time, as the situation and exigencies of the said bastard child or children, may require.

When and  
where Bonds  
are to be re-  
turned.

6. SEC. II. It shall be the duty of the justice or justices of the peace, before whom the aforesaid bond shall be taken, to return such bond to the clerk of the inferior court of the county in which such female shall reside, within thirty days after the same is taken.

### *Voluntary Examination of a Woman, with Child of a Bastard.*

STATE OF GEORGIA, } The voluntary examination of *Nancy Loose-*  
*Houston County.* } *habit*, of said County, a free white single woman,  
(taken on oath, before the undersigned, a Justice of the Peace, in and  
for said County,) this *first* day of *May*, eighteen hundred and *fifty-nine*,  
who saith, that she is now with child, and that the said child is likely  
to be born a bastard, and to become chargeable to said County. The  
deponent further saith, that *Simon Carenaught*, of said County, is the  
father of said child.

Before me, *James Mack, J. P.*

*Her*  
NANCY X LOOSEHABIT.  
*Mark.*

*Examination after the birth of the Child.*

STATE OF GEORGIA, } The examination of *Nancy Loosehabit*, of the  
*Houston County.* } County aforesaid, a free white single woman,  
 (taken upon oath, before the undersigned, a Justice of the Peace, in  
 and for said County) this *first* day of *May*, eighteen hundred and fifty-  
 nine, who saith, that on the *first* day of *March*, now last past, she, the  
 said *Nancy*, in the County aforesaid, was delivered of a *male* bastard  
 child; and that the said bastard child is likely to become chargeable  
 to said County. The deponent further saith, that *Simon Carenaught*,  
 of said County, is the father of said child.

Before me, *James Mack, J. P.* *Her*  
 NANCY ✕ LOOSEHABIT.  
*Mark.*

*Warrant to bring a Woman, suspected to be with Child of a  
 Bastard, before a Justice of the Peace, to be examined there-  
 upon.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the  
*Houston County.* } Peace for said County.

*To any lawful Officer to execute and return.*

Whereas, (*it is known to me, or information hath been made to me on  
 oath, as the case may be,*) that *Nancy Loosehabit*, of said County, a free  
 white single woman, is with child, which child, when born, will be a  
 bastard, (*or has been delivered of a bastard child, if the child has been born*)  
 and is likely to become chargeable to the County. These are, there-  
 fore, to command you to apprehend and bring before me, or some  
 other Justice of the Peace for said County, the aforesaid *Nancy*, to  
 answer to the matters alleged against her, as aforesaid, for which this  
 shall be your sufficient warrant.

*Given under my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—When the woman is brought before the Justice she must be examined as  
 directed in the foregoing forms. The Justice must be careful to observe, that the whole  
 of these proceedings are founded upon the fact that “the child is likely to become charge-  
 able to the county;” if that is not the case, the Justice has no right to interfere in the  
 matter, at least, in this way.

*Warrant against the Reputed Fathers.*

STATE OF GEORGIA, } By *James Mack*, one of the Justices of the  
*Houston County.* } Peace for said County.

*To any Lawful Officer to Execute and Return.*

Whereas, upon the examination of *Nancy Loosehabit*, a free, white,  
 single woman, *this day*, taken on oath before me, it appears that she  
 is now with child, which child, when it shall be born, will be a Bastard,  
 (*or has been delivered of a child, which child is a Bastard, as the case  
 may be,*) and is likely to become chargeable to said County. And  
 the said *Nancy* hath confessed, on oath that *Simon Carenaught*, of  
 said County, is the father of said child. These are, therefore, to  
 command you to apprehend the said *Simon Carenaught*, and bring him



before me, or some other Justice of the Peace for said County, to answer the said charge.

*Given under my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—The Reputed Father has the unquestionable right to traverse the charge made against him; but the Justice, (if it appears *probable* that the charge is well founded,) should bind him over to the next Superior Court; if no probability of his guilt appears, the Defendant should be discharged.

The Reputed Father, if he does not deny the charge, may give a Bond of Indemnity, which the Justice must receive.

### *Bond of Indemnity given by the Reputed Father.*

STATE OF GEORGIA, } We, *Simon Carenaught* as principal, and *Richard*  
*Houston* County. } *Roe* as security, both of said County, acknowledge  
ourselves held and bound to *John H. Ragin, John D. Winn, William*  
*F. Postell, William T. Swift and John Killen*, Justices of the Inferior  
Court of said County, and their successors in office, in the sum of one  
hundred and fifty pounds, (being six hundred and forty-two dollars  
and eighty-five and three-quarter cents;) subject to the following con-  
dition—

The condition of the above obligation is as follows—whereas the  
above bound *Simon*, stands charged with being the Reputed Father  
of a Bastard child of which *Nancy Loosehabit* is now pregnant, (*or has*  
*lately been delivered*, as the case may be.) Now, if the said *Simon* do  
and shall, from time to time, and at all times hereafter, well and truly  
educate and maintain said child, until it shall attain the age of four-  
teen years; and also pay the expenses of lying-in with the said child,  
boarding, nursing and maintenance of the said *Nancy*, while she is  
confined by reason of bearing said child, then this obligation to be  
void; otherwise, of force. This *May 1, 1859.*

SIMON CARENAUGHT, *prin'l.* [L. S.]

RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—This Bond should be filed in the Clerk's Office of the Inferior Court.

### *Commitment.*

STATE OF GEORGIA, } To *John Jacobs*, Constable, and to the Keeper of  
*Houston* County. } the Jail of said County.

You, the said Constable, are hereby directed to convey the person of  
*Simon Carenaught*, to the Keeper of the Jail of said County. And you,  
the said Keeper, are hereby required to receive into your custody, in  
said Jail, the person of said *Simon*, who being charged, *this day*, before  
me, by *Nancy Loosehabit*, a free white single woman, of having gotten  
her with child, which child when born will be a Bastard, (*or is a Bas-*  
*tard*, as the case may be,) and likely to become chargeable to said Coun-  
ty. And the said *Simon* having refused to give Bond, as required by  
law, to indemnify the said County from all charges on account of said  
child. And said *Simon* having failed and refused to give Bond for his  
appearance at the next Superior Court for said County, to answer the  
said charge: therefore, you the said Keeper, having received the said

*Simon* into the Jail aforesaid, him safely and securely keep, until he shall be delivered by due course of law.

*Given under my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

NOTE.—Should the Mother refuse to discover the Father of the child, or to give Bond for its maintenance, she may be Committed, until she does.

*Bond given by the Defendant to appear at the Superior Court.*

STATE OF GEORGIA, } We, *Simon Carenaught* as principal, and *Richard*  
Houston County. } *Roe* as security, both of said County, acknowledge  
ourselves held and bound to his Excellency *Joseph E. Brown*, Govern-  
or of said State, in the sum of *five hundred* dollars, subject to the fol-  
lowing condition—

The condition of the above obligation is as follows—whereas, *Nancy Loosehabit*, a free white single woman, of said County, hath this day, on oath, accused said *Simon* with being the father of a child with which she is now pregnant, and which child when born will be a Bastard, (or, *which child being already born, is a Bastard*, as the case may be,) and is likely to become chargeable to said County. And whereas, said *Simon Carenaught*, denies being the father of said child, and is desirous of traversing the truth of said charge, according to law: now, should said *Simon* well and truly be and appear at the next Superior Court to be held in and for said County, and from term to term, and from day to day, and abide such proceedings as may be instituted against him, then and there, then this obligation to be void; otherwise, of force. This *May 1, 1859.*

SIMON CARENAUGHT, *prin'l.* [L. S.]

RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—This Bond should be filed in the Clerk's Office of the Superior Court.

*Bond given by the Mother of a Bastard Child.*

STATE OF GEORGIA, } We, *Nancy Loosehabit* as principal, and *Rich-*  
Houston County. } *ard Roe* as security, both of said County, ac-  
knowledge ourselves held and bound to *John H. Ragin, John D. Winn,*  
*William F. Postell, William T. Swift and John Killen*, Justices of the  
Inferior Court, and their successors in office, in the sum of one hundred  
and fifty pounds, (being six hundred and forty-two dollars and eighty-  
five and three quarter cents;) subject to the following condition—

The condition of the above obligation is as follows—whereas, *Nancy Loosehabit*; a free white single woman, of said County, has been brought before *James Mack*, a Justice of the *Peace*, of said County, charged with being with child, which child when born will be a Bastard, (or, *if the child be already born, which child is a Bastard*,) and is likely to become chargeable to said County. Now, should the said *Nancy*, well and truly educate and maintain the said child, until it shall arrive at the age of fourteen years; and also, save harmless the said County, from all expenses of lying-in with said child, boarding, nursing and maintaining said *Nancy*, during the time of her confinement in giv-



ing birth to said child, then the above obligation to be void ; otherwise, of force. This *May* 1, 1859.

*Her*  
NANCY ~~X~~ LOOSEHABIT, *prin'l.* [L. S.]

*Mark.*  
RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—This Bond should be filed in the Clerk's Office of the Inferior Court.

## CHAPTER XXV.

### PEDDLERS.

AN ACT to alter and amend an act entitled “an act to impose an additional Tax on Peddlers,” &c., passed Dec. 10, 1817.—*Approved Dec. 9, 1819.*

Peddlers must  
have License,  
and take an  
Oath.

Form of the  
Oath.

To be record'd.

A license for  
each Wagon,  
etc., which  
must be  
shown on pro-  
per demand.

Clerk's re-  
sponsibility  
for money.

1. SEC. I. From and after the passing of this act, it shall be the duty of every peddler or itinerant trader, who shall wish to vend any goods, wares or merchandize, in this State, to apply to the clerk of the inferior court of each county in which he may be disposed to vend goods, wares or merchandize, and procure a license, under the seal of the county court, [*see* 9,] with an annexed copy of the oath ; which shall be administered to him by the clerk of the inferior court, as follows—“That I, A B, now applying for license to vend goods, wares or merchandize, in the county, (inserted in such license,) do solemnly swear, (or affirm, as the case may be,) that I will use this license in no other county than the one for which it is granted ; nor transfer or suffer any other person or persons, in mine or their name or names, to use the same—so help me God ; [*see* 9.] And that the clerk shall record such oath and license, in a book to be kept by him for that purpose : *Provided nevertheless*, that there shall be one license for every wagon, cart or other vehicle, employed or used in vending such goods, wares or merchandize, which they shall be bound to show to any sheriff, deputy sheriff, constable, justice of the peace, and to any civil or military officer whatever, when demanding an exhibit of the same, and on failure or refusal thereof, shall forfeit and pay the sum of \$1,200, one-half to the informant, the other half to be paid over to the clerk of the inferior court, and applied to county purposes. And that in all cases where the said peddlers shall take out such license, and pay over to the clerk the amount of taxes, and the clerk shall neglect to pay over to the treasurer, agreeably to the provisions of this act, he shall be subject to indictment, and if found guilty, shall be fined in a sum not less than double the amount received by him.

AN ACT to authorize all free citizens of the United States, to carry Books, Maps, Charts and Mathematical Instruments, from place to place, for the purpose of sale.—*Approved Nov. 25, 1822.*

*Whereas*, one of the best means of securing the permanence of our institutions, and promoting the virtue and happiness of the people, is the dissemination of useful knowledge. *And whereas*, the most certain method of effecting this dissemination, is the carrying of books, from place to place, for sale, among us—

Books, Maps,  
etc., may be  
sold without  
License or  
interruption.

2. *Be it therefore enacted*, That from and after the first day of January next, it shall be lawful for all free citizens of the United States, to carry, from place to place, and to sell, in this State, such number of books, maps, charts

and mathematical instruments, as they may think proper, without procuring license for so doing; or being subject to taxation, or interruption therefor. [and see 8:] *Provided*, that this act shall in no wise contravene the provisions heretofore or hereafter enacted, in relation to itinerant traders in, or venders of other goods, wares and merchandize.

AN ACT to alter and amend an act entitled "an act to impose an additional Tax on Peddlers, and other Itinerant Traders," passed the 9th day of December, 1819.—*Approved Dec. 9, 1824.*

3. SEC. II. It shall be the duty of the comptroller-general, [see 9,] issuing licenses, as aforesaid, to describe, as nearly as he can, in every license that he may issue, the age, size, complexion, &c., of the person to whom such license is granted. License to describe person, etc.

4. SEC. III. On oath being made before any judicial officer of this State, justice of the inferior court, or justice of the peace, that a violation of this law has been committed, it shall be his duty to issue a warrant from under his hand, directed to any sheriff, deputy-sheriff, constable, or marshal of any town or city, commanding them, or each of them, to arrest the offender or offenders, seize, bring him or them, and the goods, wares or merchandize, which they may have in their immediate possession, before any judge of the superior court, in term-time, or before any of the justices of [the] inferior court, or justices of the peace; and if, on trial before any of them, it shall appear from the evidence, that the charge or charges, are malicious or unfounded, he, she or they shall be discharged, without cost; otherwise, he, she or they shall be bound, with one or more sufficient securities, in the sum of \$500, in a joint and several bond, for his, her or their appearance at the next superior court to be held in the county where such offence shall have been committed; and on failing to give such security as the court shall deem good and sufficient, shall be committed to jail. At which court the attorney or solicitor-general shall prefer a bill of indictment against the party so offending; who shall, if convicted, be fined by the court, in the sum of not less than \$200, nor more than \$300, for each and every violation of this law; and the party so offending, shall stand committed until such fine or fines, be paid.—[See 11.] How person violating these Laws, to be proceeded against.

5. SEC. IV. The fine or fines which may be incurred, for each and every violation of this law, shall be collected as all other fines or penalties; and when so collected, shall form a fund in the hands of the clerks of the inferior court of the several counties in this State, and be appropriated at the discretion of the inferior court, to the support and maintenance of the poor of the county where such offence is actually committed.—[See 7.] Fines how appropriated.

6. SEC. V. This act shall not prevent the corporation of any town or village, from exacting from such peddler, or other itinerant trader, a sum not exceeding \$15, for every day for which he, she or they are found offering their goods, wares or merchandize, for sale therein: *Provided*, that nothing herein contained shall be so construed, as to compel any person to obtain a license for trading on the manufactures of this State.—[And see 8.] This act not to interfere with Corporations. No License for home manufactures.

7. SEC. VI. The revenue arising under this act, shall be added to and become a part of the poor-school fund. Revenue how disposed of.

#### TAX ACT OF 1832.

8. SEC. IV. Nothing contained in the first and second sections of an act, assented to on the 22d December, 1831, entitled "an act to alter and amend an act, to impose an additional tax on peddlers and other itinerant traders, passed 9th December, 1824, and to punish such traders for illegal trading with slaves, shall be so construed, as to prevent or prohibit any individual from selling, without license, any article which may be actually manufactured within Books, etc., exempted. And home manufactured Articles.



this State ; or any books, maps or charts, which may be made, either in this State or elsewhere.

AN ACT to alter and amend the several acts in relation to Itinerant Traders, and to prescribe the mode of their obtaining License.—*Approved Nov. 27th, 1845.*

Application for License to Clerk Inferior Court. 9. SEC. I. That from and after the passing of this act, when any person shall wish to traffic in, and vend wares, goods and merchandize, as an itineran trader, he shall apply to the clerk of the inferior court [*of the county*] in which such person may thus wish to trade and traffic, for a license. And said clerk shall issue said license, granting permission to such applicant, to trade and traffic as an itinerant trader, within the limits of the county where such application is made,

Justices of the Inferior Court to fix tax, not less than \$50. for and during one year from the issuing of said license : *Provided*, that such clerk shall immediately notify the justices of the inferior court, and the said justices, or a majority of them, shall and they are hereby authorized and em-

Applicant must pay Cl'k \$1 ; and prove good character ; and take Oath. powered to impose such tax, as in their judgment, may seem most advisable : *Provided also*, that said tax shall not be less than fifty dollars for said license ; to be used by the inferior court, for county purposes ; and shall pay to said clerk one dollar, as his fee for issuing said license ; and shall produce to said inferior court, evidence of their good character ; and shall also, take and subscribe on oath before said clerk, who is hereby authorized to administer said oath, that such applicant has resided in this State, at least twelve months pre-

Free Peddl'g. vious to such application, [*see 14 :*] *Provided*, that nothing herein contained, be so construed as to prevent persons from peddling on such articles as are exempt under the present law.

Subject to all penalties heretofore imposed. 10. SEC. II. Such person so applying for and obtaining such license, shall be subject to all the penalties prescribed by law, now in force, in relation to trading with slaves, and other interferences with the property of the citizens of this State, and shall be subject to the same rules and restrictions as are of force respecting the issue of the license to peddlers.

Violation of this act, Misdemeanor, punishment, fine and imprisonment. 11. SEC. III. If any person shall trade and traffic in goods, wares or merchandize, as an itinerant trader, as aforesaid, without having first obtained the license prescribed in the first section of this act, he shall be guilty of a misdemeanor, and liable to indictment in the superior court, of the county where such trading and trafficking took place ; and on conviction, shall be fined and imprisoned, or either, at the discretion of the court.

Saves the City of Savannah. 12. SEC. IV. Nothing in this act shall be construed to take from the corporate authorities of the city of Savannah, the power to regulate peddlers, within the limits of the city.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to authorize the Inferior Courts of the several Counties in this State, to grant License to certain persons therein described, upon certain conditions.—*Approved Feb. 21, 1850.*

Inferior Court may grant License, etc. 13. SEC. I. That from and after the passage of this act, the inferior courts of the several counties in this State, shall upon the recommendation of the grand-jury thereof, be empowered to grant license to peddle, in their respective counties ; to indigent and infirm persons ; upon such terms and restrictions as they may impose.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the prevention of Foreigners Peddling in the State of Georgia.—*Approved, Jan. 19, 1852.*

14. SEC. I. That from and after the passage of this act, no foreigner coming into this State, shall be permitted to peddle or vend any goods, wares or merchandize, as an itinerant trader, unless said foreigner shall have taken the oath of allegiance to the United States, or shall have been a resident of the State of Georgia, for the term of five years, previous to said peddling.

Foreigner not allowed to Peddle, until he takes Oath, etc.

15. SEC. II. That any foreigner violating the provisions of this act, shall be indicted for a misdemeanor, and on conviction, shall be punished by a fine not less than five hundred dollars, and on failure to pay said fine, shall be imprisoned for six months, in the common jail of said county, where said conviction takes place.

Misdemeanor, and punishment.

16. SEC. III. That on the trial of any foreigner, for a violation of this act, all that shall be required of the State to prove, is the peddling or vending of said goods, wares or merchandize, by said foreigner; and unless said foreigner shows that he has been a resident of this State, as heretofore required, or that he has taken the oath of allegiance, he shall be convicted for the offence of a misdemeanor, and punished, as aforesaid.

Proof necessary for conviction.

What Foreigner must show.

SEC. IV. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Oath of Applicant for License to Peddle.*

STATE OF GEORGIA, } In person, appeared before the undersigned,  
Houston County. } Clerk of the Inferior Court of said County, *A B*,  
who says, "That I, *A B*, now applying for License to vend Goods, Wares and Merchandize, in the County of *Houston*, do solemnly swear, (or affirm, as the case may be,) that I will use this License in no other County, than the one for which it is granted; nor transfer, or suffer, any other person or persons, in mine or their name, or names, to use the same. And I do further swear that I have resided in the State of Georgia, *five years*, previous to this application for License—so help me God." This *May 1, 1859*.

Before me—*John H. King, Clerk I. C.*

*A B.*

### *Form of License to Peddle.*

STATE OF GEORGIA, } By *John H. King*, Clerk of the Inferior Court of  
Houston County. } said County.

*To all whom it may concern.*

Whereas, *A B*, an Itinerant Trader, (who desires to vend *Goods*, in the County of *Houston*,) applies to me for License, for said purpose; therefore, this is to certify and make known, that said *A B*, (having complied with the requirements of the law,) is hereby authorized, for and during the period of one year, from the date of these presents, to Peddle *Goods* in the County of *Houston*. Said *A B*, is *forty-five* years of age, *five feet ten inches* in height, of *sallow* complexion, and uses a *two horse wagon* for the purpose of conveying his *Goods*.

*Given under my hand and seal of Office, this May 1, 1859.*

[L. S.]

*JOHN H. KING, Clerk I. C.*



*Oath against Peddler.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
                   Houston County. } one of the *Justices of the Peace*, for said County,  
*John Doe*, who being sworn says, that *A B*, an Itinerant Trader, committed the offence of Misdemeanor, in said County, on the *first* day of *May*, of the present year; for that the said *A B*, without License, or other authority, did, on said day and year, in said County, Peddle *Goods*; in violation of law.

Sworn to and subscribed,  
 before me, this *May* 1, 1859. }

*James Mack, J. P.*

JOHN DOE.

*Warrant against Peddler.*

STATE OF GEORGIA, } To *John Jacobs*, one of the *Constables* of said  
                   Houston County. } County.

Whereas, I have received information, upon the oath of *John Doe*, that *A B*, an Itinerant Trader, committed the offence of Misdemeanor, in said County, on the *first* day of *May*, of the present year; for that the said *A B*, without License, or other authority, did, on said day and year, in said County, Peddle *Goods*; in violation of law. These are, therefore, to authorize and require you, forthwith, to arrest the said *A B*, and bring him and his *Goods*, before me, that he may be dealt with as the law requires.

*Given under my hand and private seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

*Bond for Appearance.*

STATE OF GEORGIA, } We, *A B*, as principal, and *Richard Roe*, as se-  
                   Houston County. } curity, both of the State and County aforesaid,  
 acknowledge ourselves, jointly and severally bound to his Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of five hundred dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, said *A B*, has been arrested, by warrant, charged with the offence of Misdemeanor, committed in said County, on the *first* day of *May*, of the present year; for peddling *Goods* in said County, without License, or other authority. Now, should the said *A B*, well and truly, be and appear at the next Superior Court to be held in said County, (and from day to day, and term to term of said Court, to answer the charge of Misdemeanor, as aforesaid,) and not depart said Court without the leave of said Court, then this Bond to be void; otherwise, of force. This *May* 1, 1859.

Approved—  
*James Mack, J. P.*

*A. B., prin'l.* [L. S.]  
*RICHARD ROE, sec'ty.* [L. S.]

*Commitment.*

STATE OF GEORGIA, { *By James Mack, one of the Justices of the Peace, for*  
*Houston County.* } *said County.*

To *John Jacobs*, one of the Constables of said County, and to the Keeper of the Jail of said County.

Whereas, *A B*, has been charged, before me, with the offence of Misdemeanor, for having, on the *first* day of *May*, of the present year, in said County, without License, or other authority, peddled Goods. And whereas, upon the arrest, by Warrant, of said *A B*, and by examination of evidence in the case, it is probable that said offence has been committed as charged. And whereas, said *A B*, has been required to give Bond and security, (as by law required), which said *A B*, fails and refuses to do; therefore, you the said Constable, are hereby directed to convey the said *A B* to the Keeper of the Jail of said County. And you, the said Keeper, are hereby required to receive, and safely keep said *A B*, in said Jail, until he shall be lawfully delivered therefrom.

*Given under my hand and seal, this May 1, 1859.*

JAMES MACK, J. P. [L. S.]

## CHAPTER XXVI.

### RETAIL LICENSE.

AN ACT for regulating Taverns, and reducing the rates of Tavern License.

—*Approved Dec. 24, 1791.*

1. SEC. I. From and after the passing of this act, any person or persons wishing to keep a tavern or house of entertainment, shall petition the justices of the inferior court, held for the county where such petitioner resides. And the court to whom such petition shall be exhibited, shall thereupon consider the convenience of such place intended for a tavern; and having regard to the ability of such petitioner to keep good and sufficient accommodations for travellers, their horses and attendants, may, at their discretion, grant a license to such person or persons, for the term of one year, next ensuing the date of such license, and from thence to the next inferior court held for the said county, and no longer. Which license, upon petition, may be renewed from year to year, if the court thinks proper: *Provided always*, that before issuing such license, the court shall cause the petitioner to enter into bond, with sufficient security, to be approved of by the court, in the sum of fifty pounds, conditioned for their keeping an orderly and decent house, with good and sufficient accommodations for travellers, their horses and attendants. Which bond shall be filed in the clerk's office, and subject to be put in suit, upon any breach thereof.

Tavern License how granted.

Bond and Security must be given, to keep an orderly house.

2. SEC. II. The justices of every inferior county court, at the first term in every year, shall fix and establish the rates and prices to be paid at taverns, for liquors, diet, lodging, provender, stabling and pasturage. And every tavern-keeper, shall within one month after the rates so estab-

Rates to be fixed by the Court from year to year.



lished, obtain of the clerk of the said court, a fair table of such rates, which shall be openly set up in the public entertaining room in every tavern, and there kept throughout the year, until the rates shall be fixed or altered again, by the court; and then a copy thereof shall be again so obtained and kept, from time to time, under a penalty of ten pounds on every tavern-keeper failing so to do. And if any tavern-keeper shall demand and receive any greater price for any liquor, diet, lodging, provender, stabling or pasturage, than by such rate shall be allowed, he, she or they, so offending, shall forfeit and pay the sum of two pounds, over and above the sum extorted, for every such offence, to the informer; recoverable with costs, before any justice of the peace, in the county where such tavern shall be.

Penalty for  
demanding  
higher Rates.

3. SEC. V. All acts heretofore made respecting any thing within the purview of this act, shall be and the same are hereby repealed: *Provided always*, that the corporation of the city of Savannah and Augusta, shall have the sole regulation and power of governing and directing taverns and granting licenses, within their several jurisdictions.

Rights of Sa-  
vannah and  
Augusta sav'd.

NOTE.—The foregoing statute, so far as it concerns *Tavern-License*, is obsolete. No one thinks of applying to the Inferior Court for authority to keep a Tavern, nor does the Court ever think of exercising authority over the subject.

AN ACT to regulate the Rates of Tavern-Licenses in this State.—*Approved Dec. 15, 1809.*

Amount of  
Tavern-  
License.  
Rights of Sa-  
vannah and  
Augusta re-  
served.

Retail License  
may be  
granted.  
Party to give  
Bond and Se-  
curity.

4. SEC. I. From and after the passing of this act, each person obtaining tavern-license, shall pay for such license, the sum of five dollars. Any law to the contrary notwithstanding: *Provided*, nothing in this act shall be construed to control the rates which now are, or may be, established by the corporations of Savannah and Augusta, or any other incorporated town in this State.

5. SEC. II. Any person on application and complying with this law, may have license to retail spirituous liquors, without being obliged to keep other public entertainment: *Provided*, such person shall give bond and sufficient security, to the inferior court, in the sum of five hundred dollars, to keep an orderly house: *And provided also*, that if they do keep a house of entertainment, they shall not be allowed any other pay than agreeably to tavern rates.

AN ACT to appoint County Treasurers and define their duty.—*Approved Dec. 24, 1825.*

License how  
procured.

Bond and  
Security.

6. SEC. III. When any person shall apply for a tavern or retailer's license, he shall pay to the county-treasurer, the fees now required by law, and shall receive from the treasurer, a certificate directed to the clerk, as aforesaid, who shall receive and enter the same as above directed, and grant the license; which shall specify the place where said retailing is to be done, upon the applicant's giving bond and security, as required by law.

AN ACT further to regulate the granting of Retail License, and sale of Spirituous Liquors.—*Approved Dec. 29, 1838.*

Applicant for  
License to Re-  
tail, to take  
an oath.

7. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, upon the application of any person, for license to retail spirituous liquors, the clerk of the inferior court to whom such application may be made, shall before the granting such license, require the applicant, in whose name such license shall issue, to take and subscribe the following oath, to wit, "I do solemnly swear, that I will not, during the next suc-

ceeding twelve months, sell, barter, give or furnish to any slave or slaves, or free person of color, any measure or quantity of distilled spirituous or intoxicating liquor, without the verbal or written consent of the owner, overseer or employer of such slave or slaves; or without the like consent of the guardian of such free person of color. And I do further swear, that I will not suffer or allow any other person to do so for me, by my approbation, knowledge or consent—so help me God.”

Form of the Oath.

8. SEC. II. On or before the first day of June next, and annually thereafter, each and every vender of any measure or quantity, less than one gallon, of distilled spirituous or intoxicating liquor, shall and are hereby required to take and subscribe the above and foregoing oath.

All Retailers to take the Oath.

9. SEC. III. From and after the first day of June next, and annually thereafter, each and every person who may or shall become a vender of any measure or quantity, less than one gallon, of distilled spirituous or intoxicating liquor, shall and are hereby required to take and subscribe the above and foregoing oath.

Sellers of less than one gallon, to take Oath.

10. SEC. IV. Upon the neglect or refusal of any person so required to take and subscribe the above and foregoing oath, each and every person so neglecting or refusing, shall be and are hereby made liable, and subject to all the pains and penalties which a person retailing without license, is now subject to by law.

Punishment for not taking the Oath.

11. SEC. V. Each and every oath so taken, shall be subscribed by the person taking the same, and attested by the clerk of the inferior court before whom the same shall be taken, in a book to be kept by him for that purpose.

Oath to be recorded.

SEC. VI. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### County-Treasurer's Certificate.

STATE OF GEORGIA, } To the Clerk of the Inferior Court of said  
Houston County. } County.

This is to certify, that *John Doe*, of said County, being about to apply for License to Retail Spirituous Liquors, in said County, has paid into my hands, the sum of five dollars. This *May 1, 1859*.

CHARLES H. HEYWOOD, *County-Treasurer*.

### Oath of the Applicant for License.

STATE OF GEORGIA, } I do solemnly swear, that I will not, during  
Houston County. } the next succeeding twelve months, sell, barter, give or furnish to any slave or slaves, or free person of color, any measure or quantity of distilled spirituous or intoxicating liquor, without the verbal or written consent of the Owner, Overseer, or Employer, of such slave or slaves; or without the like consent of the Guardian of such free person of color. And I do further swear, that I will not suffer or allow any other person to do so for me, by my approbation, knowledge or consent—so help me God.

Sworn to and subscribed,  
before me, this May 1, 1859.  
*John H. King, Clerk I. C.* }

JOHN DOE.

NOTE.—This oath must also be taken by every person who may or shall become a vender of any measure or quantity less than one gallon, of distilled or intoxicating liquor.



*Bond given by the Applicant.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe*  
*Houston County.* } as security, both of said County, are held and  
 bound unto *John H. Ragin, Henry M. Holtzclaw, John D. Winn, Wil-*  
*liam F. Postell* and *William T. Swift*, Justices of the Inferior Court of  
 said County, for the time being, and their successors in office, in the  
 sum of fifty pounds, (\$214 28 $\frac{4}{7}$ ;) subject to the following condition—

The condition of the above obligation is as follows—whereas, the  
 said *John Doe* has, *this day*, applied for License to Retail Spirituous  
 Liquors, which License is about to be issued. Now, should the said  
*John Doe*, well and truly, during the continuance of the said License,  
 keep and maintain an orderly and decent house, then this obligation  
 to be void; otherwise of force. This *May 1, 1859.*

Approved—  
*John Ragin, J. I. C.*  
*John D. Winn, J. I. C.*  
*H. M. Holtzclaw, J. I. C.* }

JOHN DOE, *Prin'l.*  
 RICHARD ROE, *Sec'ty.*

NOTE.—The bond must be filed in the Clerk's Office of the Inferior Court, "and subject to be put in suit upon any breach thereof."

*License to Retail.*

STATE OF GEORGIA, } Whereas, *John Doe*, of said County, has paid  
*Houston County.* } into the County-Treasury the sum of five dollars;  
 has given Bond and Security, and taken the oath required by law;  
 therefore, said *John Doe*, is hereby authorized and Licensed, for the  
 term of one year, from the date of these presents next ensuing, to  
 Retail Spirituous Liquors, in said County; and for that purpose, this  
 shall be his sufficient License.

*Given under my hand and official signature, this May 1, 1859.*

JOHN H. KING, *Clerk Inferior Court.*

NOTE.—There is no subject in the law more fruitful of mischief than this. The Legislature has attempted to restrain this mischief by stringent enactments—oaths are imposed, bonds are required, and prosecutions threatened, yet the mischief is not abated. Negroes, somehow or other, (wherever there is a shop,) procure as much liquor as they may be able to pay for; and this is done, more particularly, on the Sabbath-day. Now, we do not come forward to propose any restrictions on the authority to License the Retailing of Spirituous liquors, but to suggest a simple alteration, which appears to promise the remedy of some at least, if not all of the mischief complained of—and that is so to change the power of granting License, as to give it to the Inferior Court, instead of permitting the Clerk to exercise it, as at present. Had the Inferior Court the power of granting License, and the power of recalling and cancelling the License whenever it was abused, we think much good might be accomplished thereby. By this arrangement, another valuable object would be secured—whenever a License was applied for, require the applicant to state the District and neighborhood in which he proposed to set up his establishment, and his application to be supported by the Petition of a majority of the people in that particular neighborhood; this would allow the people amongst whom the shop was to be located, to say, whether or not, it should be settled among them. This would relieve neighborhoods of what most people now regard as a nuisance and curse. Certainly no one can object to the people controlling the establishment of Retail-shops.

## CHAPTER XXVII.

## WEIGHTS, MEASURES, ETC.

AN ACT to regulate Weights and Measures in this State.—*Approved Dec 10, 1803.*

1. SECS. I and II. [Repealed by act of 1839, except the following—] And if any person or person whosoever, shall sell or attempt to sell any article or thing by any other or less weight or measure than that so established, he, she or they so offending shall forfeit and pay three times the value of the articles so sold or attempted to be sold; to be recovered before any justice of the peace, if it should not amount to more than thirty dollars, and if above that sum, before any judge of the superior court, or the justices of the inferior court, by action of debt; one-half whereof shall be for the use of the informer or person bringing the action, and the other for the use of the county in which such act or offence may happen. Penalty for selling below the lawful standard.

2. SEC. III. It shall be the duty of the justices of the inferior court, or a majority of them, of the respective counties of this State, to procure a marking instrument, seal or stamp, for the purpose of marking, sealing or stamping, all weights and measures within their several counties; which marking instrument, seal or stamp, shall remain in the clerk's office of the inferior court, by him to be affixed to any weight or measure which he may find to correspond with, or not less than, the standards established by said corporations of Savannah and Augusta. Weights and Measures to be marked by the Clerk of the Inferior Court.

3. SEC. IV. The said clerks of the inferior court shall receive six and one-fourth cents, for each and every weight, or measure, by them so marked, sealed or stamped, to be paid by the person obtaining the same. Clerks' Fees.

AN ACT to regulate the manner of Weighing with Scales or Steelyards, throughout the State of Georgia.—*Approved Dec. 16, 1815.*

*Whereas*, it is customary to deduct for every draft or turn of the scale or steelyard, a certain number of pounds, in proportion to the weight of the article weighed, which custom is evidently contrary to every principle of justice or propriety; for remedy whereof—

4. SEC. I. *Be it enacted*, That immediately from and after the first day of January next, it shall not be lawful to make any such deduction from the true weight of any article or articles, for or on account of the draft or turn of the scales or steelyards. No deduction allowed.

5. SEC. II. Any purchaser or weigher of any article or articles whatever, who shall require or make the deduction or deductions intended to be provided against by the foregoing section, shall forfeit and pay for each and every such offence, the sum of \$500; to be recovered by action of debt before any court having competent jurisdiction to take cognizance thereof, one moiety of which forfeiture shall go to the use and for the benefit of the county in which such offence shall have happened, and the other to the informer. \$500 penalty for violating this statute.

SEC. III. [Repeals all repugnant laws.]



AN ACT to amend an act passed 10th Dec., 1803, entitled "an act to make uniform a standard of Weights and Measures, in this State."—*Approved Dec. 23, 1839.*

U. S. standard adopted.

6. SEC. I. *Be it enacted*, That the standard of weights and measures adopted by the Congress of the United States, shall be and the same are hereby adopted and considered a standard of weights and measures for this State.

Governor to procure a number of standards.

6\*. SEC. II. From and immediately after the passage of this act, it shall be the duty of his excellency, the governor of this State, to cause to be procured, in some cheap and economical way, one hundred standards of each, to correspond in weights and measures, with those now in the executive office in Milledgeville.—[*See Act of 1854.*]

The Governor to issue his Proclamation.

7. SEC. III. So soon as the said standards shall have been procured, as contemplated in this act, his excellency, the governor, is hereby authorized to issue his proclamation, giving publicity to the same, calling upon all the citizens of this State, and others within the jurisdiction of the same, to conform thereto, and abide the same.

Weights and Measures to be procured for each County, by the Justices of the Inferior Court.

8. SEC. IV. When his excellency, the governor, shall have made his proclamation, in pursuance of this act, it shall be the duty of the justices of the inferior courts of the several counties of this State, or a majority of them, and they are hereby required, to obtain from the executive office, by their clerk, or some other person by them appointed for that purpose, one of each of the standards of weights and measures, to be kept in the clerk's office of said inferior court of said county, for the benefit of all the citizens thereof.

Notice to be given.

9. SEC. V. It shall be the duty of the justices of the inferior courts aforesaid, or a majority of them, upon the receipt of such standard of weights and measures, to give sixty days' notice, at the court-house of the county, and three of the most public places in the same, in order that all may be informed thereof.

Penalty for using other Weights and Measures.

10. SEC. VI. If any person or persons within the limits of this State, shall use or cause to be used, or in anywise sanction the use of any weights and measures, for their own use and benefit, either for themselves or any other person with whom they may be connected, of less dimension than those adopted by this act, as standards, after six months shall have expired from the proclamation of his excellency, [*he or she*] shall upon proof and conviction thereof, be subject to all the pains and penalties, both civil and criminal, imposed [*imposed*] by the penal code of this State, and in the act to which this is amendatory. And if he, she or they, shall be the proprietor, superintendent, weight-clerk or assistant, in ware-houses or places where cotton or other produce are weighed or sold, he, she or they shall be liable to a penalty, civil or criminal, in a fourfold amount.

SEC. VII. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act "to make uniform a standard of Weights and Measures, in this State," assented to December 23d, 1839.—*Approved Feb. 9, 1854.*

*Whereas*, there have been several new counties created since the passage of the above referred-to act, and as some of the old Counties, then existing, through oversight, or neglect of the Justices of the Inferior Court, failed to secure their quota of said Standards; for remedy whereof—

11. SEC. I. *Be it enacted*, That from and after the passage of this act, the tenth section of the second division [*second section*] of an act "to regulate weights and measures, in this State," shall be amended so as to read as

follows—From and immediately after the passage of this act, it shall be the duty of his excellency, the governor of this State, to cause to be procured, in some cheap and economical way, fifty standards of each, to correspond in weight and measure, with those now in the executive office in Milledgeville; subject to the order of the new and such old counties, as have not been supplied under the act of the 23d December, 1839.

Governor to procure standards of W'ghts and Measures for new Counties.

NOTE.—The meaning of the foregoing act is, that the Governor shall provide for the supply of Standard Weights and Measures, for such old counties as may not have been supplied, and such new counties as may have been created since 1839. The act supposes that fifty standards will do this.

## CHAPTER XXVIII.

### FOREIGNERS.

AN ACT for ascertaining the rights of Aliens, and pointing out a mode for the admission of Citizens.—*Approved Feb. 7, 1785.*

*Whereas*, the many advantages and peculiar blessings which this State enjoys, may induce foreigners to apply for a participation thereof. *And whereas*, it is the intention of the legislature to confer those benefits on all such as may apply, and do merit the same—

1. SEC. I. *Be it enacted*, That all free white persons, being aliens, or subjects of any foreign state or kingdom, at peace with the United States of America, who shall register or enrol their names in the office of the clerk of the superior court of the county where such aliens purpose to reside, may be and they are hereby vested with the rights and privileges of acquiring, possessing, or holding and selling, devising, or otherwise disposing, of all kinds of personal property; and renting houses or lands, from year to year. And shall have the as may arise or have arisen since the 12th day of July, 1782; either personally, right of suing for all such debts, demands or damages, other than for real estate, or by attorney, or otherwise; and in case of death, by his, her or their executors or administrators.

Rights of Aliens.

2. SEC. III. *Provided always, and be it enacted*, That no such person shall be a member of the General-Assembly, or of the Executive Council, or hold any office of trust or profit, or vote for members of the General-Assembly for the term of seven years, and until the legislature shall, by a special act for that purpose, enable such person so to do: *And provided also*, that all such aliens or persons aforesaid, shall be subject and liable to pay such alien-duties as have been heretofore, or may hereafter, be imposed by the legislature.

Privileges and disabilities of Aliens.

3. SEC. IV. No persons, on any act of confiscation and banishment, in this or either of the States; nor any persons who have borne arms against this, or the United States, that were citizens of this, or either of the said States, during the war, shall avail him or themselves of any of the rights, privileges or immunities, intended to be given or conferred by this act, except such persons as may have availed themselves of coming in during the late war, under certain proclamations issued, and that may have been adopted and sanctioned by the legislature: *Provided likewise*, that this act shall in nowise extend or be construed to extend, to oblige such persons who may have applied to become citizens of this State, to undergo the probation herein set down or contained.

Tories not allowed the benefits of this act.



Disabilities of persons receiving their Education in foreign countries.

4. SEC. V. If any person or persons, under the age of sixteen years, shall after the passing of this act, be sent abroad without the limits of the United States, and reside there three years, for the purpose of receiving an education under a foreign power; such person or persons, after their return to this State, shall for three years be considered and treated as aliens, in so far as not to be eligible to a seat in the legislature or executive authority, or to hold any office, civil or military, in the State for that term, and so in proportion for any greater number of years as he or they shall be absent as aforesaid; but shall not be injured or disqualified in any other respect.

#### FOREIGNERS LENDING MONEY IN THIS STATE.

AN ACT for the security of Foreigners who may lend Money at Interest on Real Estates.—*Approved Feb. 21, 1785.*

*Whereas*, the borrowing of money on interest from foreigners may benefit this State, and it is but reasonable, that any foreigner lending money should be secured on real estates by way of mortgage, and at liberty to institute suits for the recovery of all sums, as well principal as interest, so loaned—

Foreigners may have Mortgages on moneys lent by them in this State, and the right of Foreclos<sup>r</sup>re.

5. SEC. I. *Be it enacted*, That it shall and may be lawful for every and all persons, being aliens, to lend money at an annual interest of seven per centum on freehold or leasehold security, by way of mortgage, on any estate within this State; and such money, whether the kingdom or state of which such money-lender is a subject or alien, shall be at peace or war with the United States, to recover, sue for, by attorneys or otherwise, in the courts of this State. And where judgment is obtained, execution shall be awarded for the sale of such mortgaged premises, for payment of the debt and interest due thereon, with costs of suit, as is common with the citizens of this State, (except such foreigner be entitled to the right of entry, or actual possession of any such mortgaged premises, by purchase or by any process for foreclosing any equity of redemption, by order of any court whatever.) Any law or custom to the contrary notwithstanding.

SEC. II. [Declares this a public act.]

#### RIGHTS OF FRENCHMEN.

AN ACT to enable the subjects of his Most Christian Majesty, to transfer and settle such of their Estates and property as is or shall happen to fall within this State. And also, to perfect the Grant of 20,000 acres of land in this State, to the Vice-Admiral, the Count D'Estaing, and to encourage the settlement thereof.—*Approved Feb. 22, 1785.*

*Whereas*, the Congress of the United States of America, on the 14th day of January, 1780, did resolve—"That it be recommended to the legislatures of the aforesaid United States, to make provision, where not already made, for conferring on the aforesaid subjects of his Most Christian Majesty, the privilege of disposing and settling their estates, agreeably to the form and spirit of the 13th article of the treaty of amity and commerce between his Most Christian Majesty and the United States of America"—

French subjects enabled to dispose of their Estates. Estates made inheritable according to the laws of France

6. SEC. I. *Be it enacted*, That the subjects of his Most Christian Majesty shall be, and they are hereby empowered, to transfer and dispose of such of their estates and property, as shall happen to be within the limits of this State. And that the estates and property of such of said subjects as are or may be deceased, and who were not citizens of this State, being within the State, shall descend to and become the estates of the heirs and legal representatives of such deceased person, according to the laws, usage and custom of the kingdom of France relative thereto. And such estate so descending, shall and may be settled agreeably to the



laws that are or shall be made relative thereto, without being obliged to obtain letters of naturalization. And that the aforesaid subjects of his Most Christian Majesty, shall have, hold and enjoy on their part, within this State, the privileges and immunities mentioned in said articles of treaty, according to the form and spirit thereof.

#### EXEMPT FROM MILITARY DUTY.

AN ACT to exempt from Military Duty, certain individuals, not Citizens of the United States.—*Approved Dec. 19, 1818.*

*Whereas*, it is deemed grievous and oppressive, that individuals, not citizens of the United States, and who are subjects of a foreign government, and only temporary residents in this State, for commercial and other purposes, and who do not intend to settle or reside in this State, or become citizens thereof, should be considered liable to such military drafts as may, from time to time, be made upon the militia of this State; and particularly where such subjects belong to governments whose laws do not recognize such military liability, or exact such military duties from the citizens of the United States—

7. *Be it enacted*, That such individuals, subjects as aforesaid, of a foreign government, shall be and they are hereby declared to be, exempt from all military duty, in the militia of this State; and from all military drafts which may hereafter be made. Any law to the contrary, notwithstanding: *Provided however*, that this law shall not be so construed or operate, as to extend to their liability to perform certain local duties within the several counties in which they reside, such as the repelling of local invasions; extinguishing conflagrations; putting down insurrections, and the like: *And provided also*, That it shall not extend to such individuals, who are subjects or citizens of a foreign government or state, the laws of which said government or state, do not extend a similar and co-extensive exemption to the citizens of the United States.

Foreigners not liable to ordinary Military duty.

#### RIGHTS OF ALIENS.

AN ACT to authorize Aliens to receive, purchase, hold and convey; mortgage or devise Real Estate.—*Approved Dec. 21, 1849.*

8. SEC. I. *Be it enacted*, That when any adult male alien citizen has come or shall come into this State to reside, and has given or shall give notice of his intention to become a citizen of the United States, according to the provisions of the acts of Congress, such aliens shall be authorized to receive, purchase and hold real estate, as fully and completely as if he were a citizen of the United States; and after he shall have become a citizen by taking the oath of allegiance in the manner prescribed by said acts of Congress, shall be authorized to convey, devise or mortgage, the said real estate, or any part thereof.

Alien filing his Declaration of Intention, may acquire and convey Real Estate.

9. SEC. II. All adult female aliens, and all minor aliens, coming into this State to reside, shall be authorized to receive, purchase and hold real estate; females to convey, devise or mortgage the same, without restriction upon their rights to do so, and with the same power as to disposal thereof in males when they become citizens of the United States.

Rights of adult female and minor Aliens.

10. SEC. III. In case of the death of any such male alien before he shall become a citizen of the United States, the real estate held by him shall not escheat, but shall be disposed of as is provided by existing laws, when land is devised to or descends to aliens.—[*See title Escheat.*]

No Escheat allowed.



## CHAPTER XXIX.

## ESCHEATS.

AN ACT to regulate Escheats in this State, and to appoint Escheators.—*Approved Dec. 5, 1801.*

- Escheator must give Bond.
- Oath of Office.
- Escheator's duty.
- Inquest.
- Certificate of the Judge to be recorded.
- Advertiseme't by Escheator.
1. SEC. I. The clerk of the court of ordinary in each county, be and he is hereby required to take upon himself and execute the duties of escheator, for the purposes and after the manner herein-after mentioned and prescribed; that is to say, every clerk of the court of ordinary in each county, shall give bond with good and sufficient securities, payable to and taken by the governor for the time being, for the use of the State; which shall be recorded in the secretary's office, of this State, in the penal sum of ten thousand dollars, for himself and sureties, jointly and severally; and conditioned for the faithful discharge of the duties of said office. And shall moreover, take the following oath, to be administered by the governor, or any of the judges of the superior court, at the time of taking said bond, to wit—"I, A B, do solemnly swear, that I will faithfully execute the duties of escheator for the State of Georgia, and diligent inquiry make for all property which hath escheated, or shall escheat to the State, according to the true intent and meaning of the act in this case made and provided—so help me God."
2. SEC. II. Where it shall appear that any person has died without will and without heirs, leaving property behind, that then and in such case, it shall be the duty of the escheator of the county in which such person shall have died, to make inquiry of all the estate, both real and personal, of which the deceased died seized and possessed, and to notify the same in writing, to the escheator of every other county in which the said deceased, at the time of his death, may have held or been possessed of any estate, either real or personal; and thereupon it shall be the duty of the escheator of the county in which such person shall have died, (and of every other escheator, so notified as aforesaid,) to make a true and just statement of all the property, so far as comes to his knowledge, which the said deceased may have been seized and possessed of, in his county; and notify the same to the judge of the superior court, at least two months previous to the meeting of said court, in such county. And the judge presiding at such court, shall cause the jury, being first sworn, to proceed and make a true inquest of all such supposed escheated property, both real and personal; which by the escheator shall be submitted to their investigation, and of a true verdict make thereon. Whereupon the judge of the court aforesaid, shall certify the same under his hand and seal, to the escheator of said county, who is hereby ordered to record the same in a book to be by him kept for that purpose; and shall return the original, into the office of the clerk of the said superior court, there to be filed and kept as a record of said court. And further, on returning the inquest into the office of the court aforesaid, the clerk shall thereupon cause to be advertised in one of the public gazettes of this State, the first week in every month for six months, the particular description of property, both real and personal, so escheated, the name of the person last seized and possessed, and the supposed time of his or her



death, together with the part of the world in which he or she was known or supposed to be born; and requiring his or her heirs, or others who may claim under him or her, to appear and make claim. And if no person shall appear and make right and title to the same within twelve months after the time prescribed for advertising the same, the clerk of the said court shall issue process, to be signed by one of the judges to the escheator, pronouncing the said property, both real and personal, to be escheated to and vested in this State, and directing him forthwith, to sell and convey the same, having given six weeks' notice of the time and place of sale, in one of the public gazettes of this State; and also, in two or more public places of the county. And it shall be the duty of every such escheator, to return the proceeds of such sale, after deducting for his own use, two and a half per cent. out of the moneys received and paid on account of sales, as a compensation for his services, and the necessary expenses thereunto attendant, into the treasury of this State, [see 18:] *Provided* No person appearing to claim, what must be done with proceeds. *nevertheless*, if any person or persons shall appear within twenty-one years, in cases of escheated real estate, but within five, if escheated personal property, and establish his title to such real or personal property, in the superior court, on an issue to be made up and tried; and the same being certified by the judge presiding at the trial of such issue, to his excellency the governor, he shall forthwith, give such person or persons, a draft on the treasury for the amount paid therein, in manner aforesaid. In what time persons may claim.

3. SEC. III. Any person or persons, without delay, shall be heard on an issue to be made up in the superior court, on a petition setting forth his, her or their right. And the said property, both real and personal, shall be committed to him, her or them, if he, she or they, shall show good evidence of his, her or their title, to hold until the right shall be found for the State or the claimant; such claimant finding sufficient security to prosecute his, her or their suit with effect, and without delay; and to render to the State the yearly value of such property, if the right be found for the State: *Provided*, that if any suit for property, supposed to be escheated, shall be prosecuted by any escheator, and the jury before whom such trial shall be had, shall think there is no probable cause, the court before whom the same shall be tried, shall award to the party aggrieved, his, her or their, reasonable and legal costs, to be paid out of any funds arising under and by virtue of this act. Claim how tried.

4. SEC. IV. Any possession, grant, conveyance, or any other cause or title, shall not preclude or hinder the State from making inquest and sale, after the manner herein-before prescribed, of all such property, both real and personal, as has been heretofore escheated, (save that which may have been escheated prior to the 4th day of July, 1776,) by the death of the person last seized and possessed, without will and without heirs; any law or usage to the contrary notwithstanding. *And further*, wherever any property, real or personal, of any person dying without will and without heirs, shall be found in the hands of any executor or administrator, the escheator shall, on behalf of the State, sue for and recover the same, either at law or in equity; and of real estate, the same when recovered, shall be sold by notice and advertisement, as herein-before directed; and if personal property, the amount of the same when recovered, shall be paid into the public treasury of this State. Property heretofore escheated.

5. SEC. V. Nothing herein contained shall prejudice the rights of creditors, or other individuals having claims or legal titles, or who shall be under the disabilities of infancy, coverture, duress, lunacy or being beyond the limits of the United States, until three years after such disabilities shall be removed. Escheator shall sue for property in certain cases. Rights of creditors and others saved.

6. SEC. VI. If any escheator shall fail to do the duty required of him by this act, or any loss or damage shall accrue to this State, by his misconduct or fraudulent practices, the offender shall be responsible for all such loss or damage. And the superior court of the county wherein the offender resides, shall Penalty on Escheator for purchasing Escheated property.



Escheator have power and authority to order a prosecution in the name of the State ; and may not purchase escheated property. the jury shall try the fact, and assess the damages and costs. And upon conviction, such escheator shall be incapable forever thereafter, of holding any place of trust or profit, within this State. *And further*, that no escheator shall, directly or indirectly, either by himself, or any person whatsoever, purchase, or be concerned with any person or persons, in purchasing any escheated property, without being subject and liable to the payment of five thousand dollars, to be sued for and recovered in any court of record, one-half for the benefit of the informer who shall sue for and recover the same, and the other half to the use of the State. *And moreover*, that every such offender, on conviction, shall be forever disabled from holding any office of trust or profit, under this State.

### *Bond of Escheator.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe* as  
           *Houston County.* } security, acknowledge ourselves, jointly and severally, bound to his Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, for the use of said State, in the penal sum of ten thousand dollars, subject to the following condition—

The condition of the above obligation is—that whereas, said *John Doe*, has been appointed Escheator for said State and County : now, should said *John Doe* well and truly do and perform, all and singular, the duties required of him by law, as Escheator as aforesaid, then the above obligation to be void ; otherwise, of force. This *May 1, 1859.*

Approved—  
*James Mack, J. P.*

JOHN DOE, *prin'l.* [L. S.]  
 RICHARD ROE, *sec'ty.* [L. S.]

### *Notice to Escheator.*

STATE OF GEORGIA, } To *James Thompson*, Escheator of the County  
           *Houston County.* } of *Bibb.*

You are hereby notified that *Patrick Welch* lately departed this life in this County. That at the time of his death he was possessed of considerable property, both *real* and *personal*. It is supposed that said *Patrick Welch* died without Will and without Heirs, whereby his Estate has Escheated to this State. Amongst the papers of said deceased, there is a Deed, in fee-simple, for *lot of land* number *fifty*, in the *fourth* District of *Bibb County* ; executed to the deceased by *William Jones*, on the *first* day of *January*, eighteen hundred and *fifty-six*. This notice, is given, in order that you may make inquiry into the fact of said *Patrick Welch* having died without Will and without Heirs, and as to any property he may have died seized and possessed of in your County, and that you may perform all the duties required of you by law, touching any property of said *Patrick Welch*, in your County.

*Given under my hand and official signature, this May 1, 1859.*

JOHN DOE, *Escheator, H. C.*

*Return of the Escheator.*

STATE OF GEORGIA, } To the honorable *Henry G. Lamar*, Judge of  
*Houston County.* } the Superior Courts for the *Macon* District.  
 Statement of the property of *Patrick Welch*, deceased, found in the  
 County aforesaid, and which is supposed to have Escheated to the  
 State.

- |   |           |
|---|-----------|
| 1. Lot of Land, No. 49, in the 10th District, worth | \$1000 00 |
| 2. 1 Sorrel Horse, worth                            | 100 00    |
| 3. Household and Kitchen Furniture, worth,          | 50 00     |
| 4. Wearing apparel, worth                           | 50 00     |

\$1200 00

I hereby certify that the above Schedule contains all the property  
 of *Patrick Welch* deceased, so far as has come to my knowledge, and  
 which is now in my possession, subject to the order of your honor.  
 This *May 1*, 1859.

JOHN DOE, *Escheator.*

*Advertisement by the Clerk.*

STATE OF GEORGIA, } To all whom it may concern.—*John Doe*, Es-  
*Houston County.* } cheator of said County, having returned to the  
 honorable Superior Court a Schedule of property, to wit, *lot of land*  
*number forty-nine* in the tenth district of said County; one sorrel *Horse*;  
*household and kitchen Furniture*, and *Wearing Apparel*, all of the esti-  
 mated value of *twelve hundred dollars*; property belonging to the Estate  
 of *Patrick Welch*, deceased, which has Escheated to the State. Said *Pat-*  
*rick Welch* died on the *first day of July*, eighteen hundred and *fifty-eight*,  
 in the County aforesaid. He is supposed to have been born in *Ireland*:  
 now, therefore, this is to require the heirs of said deceased, (if there be  
 any) or others who may claim under said deceased, to appear and make  
 claim to said property, otherwise said property will be disposed of as  
 the law directs. This *September 10*, 1859.

WILLIAM H. MILLER, *Clerk S. C.*

NOTE.—This notice must be published the first week in every month for six months.

*Process for the sale of the Property.*

STATE OF GEORGIA, } To *John Doe*, Escheator of said County.  
*Houston County.* } Whereas, *Patrick Welch*, died on the *first day*  
 of *July*, eighteen hundred and *fifty-eight*, possessed of considerable real  
 and personal property, to wit: *lot of land number forty-nine*, in the  
*tenth* District of said County; one sorrel *Horse*; sundry articles of  
*household and kitchen Furniture*, and wearing *Apparel*, which has  
 escheated to the State. And whereas, after due and legal notice has  
 been published, requiring the heirs of said deceased, or others claim-  
 ing under him, to appear and claim said property, no one interested  
 in the Estate of the deceased has appeared to claim the same: there-



fore, it is hereby pronounced and declared that said property, both real and personal, has Escheated to and vested in the State.

You will proceed, after giving the notice required, to sell and convey said property, at the court-house door, in said county, (on some sheriffs' sale day,) to the highest and best bidder, *for cash*. And after deducting two and a half per cent. for your own use, as compensation for your services, and all expenses, you are required to return the proceeds of such sale, into the County Treasury. This *May 1, 1859*.

Approved—

*Henry G. Lamar, J. S. C. M. C.*

WILLIAM H. MILLER, *Clerk S. C.*

### *Escheator's Sale.*

STATE OF GEORGIA, } On the *first Tuesday in July* next, will be sold  
                   Houston County. } *for cash*, at the court-house door, in the town of  
*Perry*, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, the following property, to wit: *lot of land number forty-nine in the tenth district of said county; one sorrel Horse; sundry articles of household and kitchen Furniture, and wearing apparel; property which has Escheated to the State.* This *May 2, 1859*.

JOHN DOE, *Escheator*.

NOTE.—This notice must be published in one of the public Gazettes of the State, and also, in two or more public places of the County, for six weeks.

AN ACT to amend an act entitled “an act to regulate Escheats.”—*Approved Dec. 5, 1805.*

Duty of the  
Court of Or-  
dinary where  
an Alien dies  
without Will  
and without  
Heirs.

7. SEC. I. From and after the passing of this act, it shall be the duty of the court of ordinary, when any alien, resident or non-resident, shall depart this life intestate and without heirs, in this State or the United States, to cause the estate and effects of such alien, without delay, to be safely collected, and a just and true inventory and appraisement thereof to be made. And after giving twenty days' notice by advertisement in one of the public gazettes of this State, [see 13,] and at two or more public places in the county where such alien shall die, shall cause the said estate to be sold at public auction, and the proceeds of such sale to be paid into court, to be applied and disposed of in manner herein-after mentioned.

Twelve  
months' no-  
tice given to  
creditors.

8. SEC. II. After such sale as above mentioned shall have taken place, and the proceeds paid into court, it shall be the duty of the said court of ordinary, and the said court is hereby required to cause public notice to be given by advertisement, for the creditors of such deceased, to come forward within twelve months after the publication of such notice, and prove their debts, to the satisfaction of the said court. And after the expiration of the said twelve months, the said court shall proceed to examine and ascertain the total amount due such creditors, and shall pay and satisfy each of the said creditors, in whole or in part, as the estate of the deceased will admit; and the surplus, if any, after such payment as aforesaid, shall be disposed of as is directed by the escheat law.

Creditors how  
paid.

Escheator  
must pay  
money in his  
hands into  
Court.  
In default  
shall pay  
double.

9. SEC. III. The several escheators of this State, who have, or may hereafter have or receive any moneys arising from the sales of such estates as aforesaid, shall upon the requisition of the court of ordinary of the county, pay such moneys into the said court, within twenty days after he shall be required so to do, by the said court; and in default thereof, shall forfeit and pay double the sum which such escheator shall have re-

ceived and have in his hands as aforesaid; to be recovered by action of debt, in any court having jurisdiction thereof.—[See 18.]

SEC. IV. The act “to regulate escheats,” so far as the same militates with this act, be and the same is hereby repealed.

### *Appointment of Appraisers.*

STATE OF GEORGIA, }  
Houston County. } By *John S. Jobson*, Ordinary of said County.

To *John Jones, John Smith, John Brown, John Green* and *John White*—You are hereby appointed Appraisers of the Estate and Effects of *Charles Smith*, an Alien, who lately departed this life, in the County aforesaid, without heirs in this State, or the United States, so far as is known or believed. You, or a majority of you, are required to collect the effects of said Alien, and to make a just and true Inventory and Appraisement thereof. And said Inventory and Appraisement so made, you shall, without delay, return into the Ordinary’s Office of said County.

*Given under my hand and seal of office, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]

### *Oath of Appraisers.*

You do solemnly swear that you will make a just and true Inventory and Appraisement of the Estate and Effects of *Charles Smith*, an Alien, to the best of your skill and ability—so help you God.

### *Return of Appraisers.*

STATE OF GEORGIA, }  
Houston County. } By virtue of our appointment as Appraisers, to appraise the Estate and Effects of *Charles Smith*, deceased, an Alien; after being sworn, we proceeded, *this day*, to the discharge of the duty required of us; the following is the result—

1. One sorrel Horse, valued at	-	-	-	\$100 00
2. One red Cow, valued at	-	-	-	20 00
3. Wearing Apparel, valued at	-	-	-	25 00

This *May 2*, 1859.

\$145 00

JOHN SMITH, }  
JOHN JONES, } *Appraisers.*  
JOHN BROWN, }

### *Sale of Alien’s Property.*

STATE OF GEORGIA, }  
Houston County. } On the *first Tuesday in June* next, will be sold, at *Perry*, in said County, (*for cash*,) between the hours of ten o’clock in the forenoon and four o’clock in the afternoon, the following property, to wit: one sorrel Horse; one red Cow, and sundry articles of Wearing Apparel. Sold as the property of *Charles Smith*, deceased, an Alien. This *May 3*, 1859.

JOHN S. JOBSON, *Ordinary*.



*Notice to Creditors.*

STATE OF GEORGIA, } The creditors of *Charles Smith*, deceased, an  
*Houston County.* } Alien, are hereby notified and required, to come  
 forward, within the time prescribed by law, and prove their debts;  
 otherwise they will be debarred payment. This *August 1, 1859.*

JOHN S. JOBSON, *Ordinary.*

AN ACT to explain and amend the Escheat Laws.—*Approved Dec. 15, 1810.*

*Whereas*, the Escheators in many Counties of this State are causing vexatious law-suits, by pointing out property not contemplated by the Escheat law of 1801; to wit: the estates of citizens of this State who bequeath their estates to persons residing in foreign parts; for remedy whereof—

Lands devis'd by citizens to Aliens to be sold, and proceeds paid over to devisee.  
 10. SEC. I. *Be it enacted, &c.*, That in all cases where a citizen of this State, or of the United States, shall die, or may have died, possessed of or entitled to any real estate, and shall leave no heir who can inherit the same, because of his or her being alien; that in such case, the said real estate shall not be held or considered subject to escheat, but the executor or administrator of such deceased citizen, shall and may proceed in the manner pointed out by law, to make sale of such real estate, and pay over the proceeds of such sale to the devisee or devisees named in the will of such deceased citizen, or to the legal representatives of such deceased citizen: *Provided always nevertheless*, that nothing herein contained, shall be so construed to affect cases where the escheator in any county, shall have already proceeded to make a disposition of property under the escheat laws of this State, and the proceeds thereof shall actually have been paid into the treasury of this State.

Sales of Escheator formerly made, declar'd valid.  
 11. SEC. II. In all cases where a citizen has heretofore died, leaving real estate, as before mentioned, and shall have made a disposition thereof by will, and the executor or executors of such deceased citizen, have proceeded to make sale of such real estate for the benefit of the heirs of such deceased citizen, such sales shall be, so far as it regards the title of such deceased citizen, held and considered valid and legal, any law to the contrary notwithstanding.

When personal property escheats.  
 12. SEC. III. No personal estate of any deceased person, shall be considered subject or liable to escheat in this State, except in cases where such deceased person shall have made no disposition of the same by will, and shall have no legal representatives to inherit the same.

Perishable articles when sold.  
 13. SEC. IV. Perishable articles of aliens shall be sold after giving twenty days' notice, in two or more places in the county where such articles may be. The other property of such alien shall be disposed of agreeably to the escheat act of 1801.

AN ACT prescribing the Oaths to be taken by Juries in certain trials under the several acts to regulate Escheats. And to authorize the Judges of the Superior Courts to adopt the necessary forms of process and other proceedings to carry the said acts into effect.—*Approved Dec. 19, 1817.*

Oath of Jury of Inquest.  
 14. SEC. I. The oath to be taken by the jury upon an inquest of office, touching escheated property, such as is described in the second section of an act, entitled "an act to regulate escheats in this State, and to appoint escheators, passed the 5th day of December, 1801," shall be as follows: "You shall true inquest make, touching the escheat of such property as may be

given you in charge, and a true verdict give according to evidence—so help you God.”

15. SEC. II. When any property returned by the escheator is claimed by any person or persons, pursuant to the third section of the above-recited act, and an issue is made up thereon, the oath to be administered to the jury upon the trial of such issue shall be as follows: “You shall well and truly try this issue of Escheat, between the State of Georgia and ———, [*here insert the name of the claimant or claimants,*] and a true verdict give, according to evidence—so help you God.”

Oath of Jury  
on trial of  
Claim.

16. SEC. III. The judges of the superior courts, in the several circuits of this State, are hereby authorized and required to devise and adopt the several forms of process, and other proceedings, which may be necessary and proper to carry into effect the above recited act, and all the several acts or parts of acts, amendatory or supplementary thereto.

Judges to pre-  
scribe Forms  
of proceeding.

AN ACT more effectually to provide for the collection of the funds arising from the sales of Escheated Property, within this State, and to apply the same to literary purposes.—*Approved Dec. 21, 1819.*

Whereas, the provision heretofore made for the collection of the funds arising from the sale of escheated property, has been found inadequate and unproductive—

17. SEC. I. *Be it enacted, &c.,* That from and immediately after the passing of this act, it shall be the duty of the attorney and solicitors-general, at the first term of the superior court in every year, in each and every county in this State, by rule or order of the said superior court, to require the escheators in the said counties respectively, to pay into the hands of said attorney or solicitors-general, for the purposes herein mentioned, all such sum or sums of money, as may be in the hands of the escheators, under the several escheat laws of this State. And in case of a default or refusal by any such escheator, the superior courts aforesaid, shall have power to punish such escheator, in the same manner as if such escheator was a defaulting officer of said court.—[*See 18.*]

Escheators re-  
quired to pay  
over money in  
their hands.

17.\* SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed, except so far as relates to the county of Chatham, where the said funds shall be applied as heretofore.

Chatham  
County ex-  
cepted.

AN ACT to alter and amend the several Escheat laws of this State, so far as relates to the disbursement of money arising from the sale of escheated property in the several counties of this State.—*Approved Dec. 29, 1836.*

18. SEC. I. From and immediately after the passage of this act, all moneys arising from the sale of escheated property, in the several counties of this State, shall vest in and become a part of the fund of said county, respectively.

Escheat  
money to be  
County funds.

19. SEC. II. The solicitor-general and attorney-general of the several judicial circuits of this State, be authorized and required to collect all such moneys arising in the several counties in their circuits respectively, in the manner pointed out by an act passed December 21st, 1819, entitled “an act more effectually to provide for the collection of the funds arising from the sales of escheated property within this State,” &c. Whose duty it shall be to pay over the same when collected to the justices of the inferior court of the county wherein the property is escheated.

Money to be  
paid over to  
Justices of the  
Inferior C't.  
[To County-  
Treasurer.]

20. SEC. III. Nothing contained in this act shall be so construed as to take from the heirs of escheated property, any rights of heirship given them by the escheat laws of force in this State.

Saves the  
rights of  
heirs.

SEC. IV. [*Repeals all conflicting laws.*]



## CHAPTER XXX.

## CORONER.

AN ACT concerning Coroners and Inquests.—*Approved Dec. 22, 1823.*

*Whereas*, much inconvenience is now felt from the existing laws on the subject of the duties and powers of Coroners—

1. *Be it enacted*, That from and immediately after the passing of this act, every person who shall be elected to the office of coroner, shall before he enters upon the execution of the duties of his office, take the following oath or affirmation, to wit: "I, A B, coroner of the county of ———, do solemnly swear (or affirm, as the case may be,) that I will well and truly serve the State of Georgia, in the office of coroner of said county. That I will, to the utmost of my power, faithfully and truly execute, or cause to be executed, all writs and precepts to me directed, which shall come to my hands; and will faithfully and truly return the same, according to the best of my knowledge, skill and judgment. That I will in no case, knowingly use or exercise the said office illegally, corruptly or unjustly. That I will neither directly or indirectly, by any means or device, or under any color or pretence whatsoever, accept, receive, take, use or enjoy, or consent to the accepting, using, receiving, taking or enjoying, any fee or reward, of or from any person or persons whomsoever, for the summoning, empannelling or returning, of any inquest, jury or *tales*, to or in any court for this State, or between party and party, other than such fees or rewards as are or shall be allowed by law for the same. And that I will not, directly or indirectly, exact or demand any manner of fee or reward, from any person or persons for serving, executing or returning, any writ, precept, process, execution or inquisition, or for any other service in my said office, other than such fees or rewards as are or shall be allowed for the same by law. But that I will, in all cases and things, touching the duties of the said office, demean myself honestly, fairly and impartially, according to the best of my knowledge, skill and judgment. [And I do further swear, that I am not the holder of any public moneys unaccounted for. And that I will support the Constitution of this State and of the United States —so help me God."]

Amendment  
to the oath,  
inserted by  
the Compiler.

Shall take In-  
quest of all  
sudden de'ths.

2. SEC. II. Every coroner shall, upon view of the body, take inquests of deaths in prisons: *Provided*, such death happened suddenly or violently, and without an attending physician, (unless such death be attended by suspicious circumstances,) and of all violent, sudden or casual deaths, within his county, and the manner of such deaths.

3. SEC. III. The coroner, as soon as he shall have notice, or be certified of any death, as aforesaid, shall make out a precept, directed to any constable of the county where the dead body is found or lying, requiring him to summon a jury-of-inquest, composed of good and lawful men, from the captain's district within which the said body may be reported to lie, (or from an adjoining district of said county, if necessary,) to appear before him at the time and place, in such precept mentioned, and contained; which precept shall be in form following: ——— County, to wit: The State of Georgia—To any

lawful Constables of ———, of said County. You are required immediately upon sight hereof, to summon ——— good and lawful men, from ——— district, (or an adjoining district, if necessary,) of the county of ———, to be and appear before me, A B, the coroner of the county aforesaid, at ———, in the said district of the said county, on the ——— day of ———, at the house of ———, in the ——— noon of the same day; then and there to inquire of, do and execute all such things as, on behalf of the State, shall be given them in charge, touching the death of ———, (or a person unknown, as the case may be.) And be you then and there, to certify what you shall have done in the premises; and further to do and execute what in behalf of the said State shall be, then and there, enjoined upon you. In the said County, this ——— day of ———, in the year of our Lord ———.

Form of precept for summoning jurors. [This precept must be copied, the blanks filled up, and then signed by the Coroner.]

4. SEC. IV. The constable to whom such precept shall be directed and delivered, shall forthwith execute the same, and shall repair to the place at the time mentioned therein, and make return of the precept, with his proceedings thereon, to the coroner.—[See 15, as to summoning jury.]

Constable's duty.

5. SEC. V. It shall be the duty of the coroner to certify and return, every constable who shall neglect or refuse to execute the services and duties, or any of them, by this act prescribed, to the next inferior court to be held in and for the county. Which court, unless a reasonable excuse be offered, shall set such fine upon the constable offending, as they shall think fit and reasonable, not exceeding fifty dollars.

Coroner to report the constable, for neglect, to the Inferior Co't.

6. SEC. VI. When any juror shall be summoned, as aforesaid, and shall fail to attend, that then and in that case, the said defaulting juror shall forfeit and pay a sum not exceeding ten dollars, to be levied by execution under the hand and seal of said coroner, unless such defaulting juror shall show good and sufficient cause of excuse, within ten days after said default; to be made on oath before any justice of the peace, and filed in the office of the clerk of the inferior court, the merits of which excuse shall be determined by the next inferior court thereafter.

Juror failing to attend may be fined, and how.

7. SEC. VII. The coroner shall swear or affirm twelve [six, see 21,] of the said jurors, who shall appear, (seven of whom shall be competent to return a verdict;) and shall administer to the foreman of the inquest, an oath or affirmation, upon view of the body, in form following:—"You, as foreman of the inquest, shall diligently inquire and true presentment make, on behalf of the State of Georgia, how and in what manner ———, (or a person deceased, unknown, as the case may be,) here lying dead, came to his death; and of such other matters relating to the same, as shall be lawfully required of you—according to evidence." And then shall swear or affirm, by three at a time, in order, the rest of the jurors, in form following:—"Such oath (or affirmation) as the foreman of this inquest hath taken on his part, you and every of you, shall well and truly observe and keep, on your part."

Oath of the foreman.

Oath of the jurors.

8. SEC. VIII. When the jurors are sworn, or affirmed, as aforesaid, the coroner shall charge them on their oath, or affirmation, to declare if the death of the person, whether he or she, died by murder, manslaughter, misadventure, misfortune, accident or otherwise. And who, and when, and by what means, and in what manner; and if by murder, who were principals and who were accessories. And if by manslaughter, who were the perpetrators, and with what instrument the stroke, or wound, was in either case given. And so of all prevailing circumstances, which may come by presumption. And if by misadventure, misfortune, accident or otherwise, whether by the act of God or man; and whether by hurt, fall, stroke, drowning, or in any other way. To inquire what persons were present at the death; from whence the deceased came, and who he or she

Coroner must charge the jury; nature of the charge.



was, and his or her parents, relations or neighbors. Who were the finders of the body. Whether killed in the same place where he or she was found, or if elsewhere; by whom, and how he or she was brought from thence; and of all circumstances relating to the said death. And if he or she died in prison, whether by hard usage there or not; and if so, how and by whom. And if he or she put an end to his or her own life, then to inquire of the manner, means or instrument, and of all circumstances concerning it.

- Witnesses may be summoned. 9. SEC. IX. It shall be lawful for every coroner to issue process for witnesses; commanding them to come before him, to be examined; and to declare their knowledge concerning the matter in question. And the said coroner shall administer to every witness, an oath, or affirmation, in form following:—"You solemnly swear, (or affirm,) that the evidence which you shall give this inquest, on behalf of the State, touching the death of C D, (or a person unknown, as the case is,) shall be the truth, the whole truth, and nothing but the truth."
- Oath of witness. 10. SEC. X. All coroners shall deliver their inquisitions to the next superior courts of their respective counties, and the said courts shall proceed thereon, against the offender.
- Inquisition must be returned. 11. SEC. XI. Every coroner, upon any inquisition before him found, whereby any person or persons shall be indicted of murder or manslaughter, or as accessory or accomplice to the said crime of murder, either before or after the fact, shall put in writing the effect of so much of the evidence given to the jury before him, as shall be material. And every such coroner is hereby authorized and required to bind all such by recognizance, as do declare any thing material to prove the said murder or manslaughter; or to prove any person or persons accessory or accessories, as aforesaid, to the said murder, to appear at the next superior court of the county where the trial thereof shall be, then and there to give evidence against such offender or offenders, at the time of his, her or their trial. And shall certify, as well as the same evidence, as such recognizance or recognizances, in writing, as he shall take, together with the inquisition before him taken; and forward to the superior court, at or before the time of the trial of the party or parties indicted.
- Evidence must be reduced to writing. 12. SEC. XII. If any coroner be remiss and do not take inquisition, as aforesaid, or do not certify as is before directed, or shall offend in any thing, contrary to the true intent and meaning of this act, the superior court of the county where such offence shall be committed, upon due proof thereof, by examination before them, shall for every such offence, set such fine upon the said coroner as the said court shall think fit and reasonable, not exceeding \$500.
- Coroner to bind over witnesses. 13. SEC. XIII. The said coroner shall, before entering on the duties of his office, give bond and security, as is prescribed in the case of sheriffs, in the sum of \$500, except in the counties of Chatham and Richmond, where the penalty of said bonds shall be \$2,000.
- Must certify proceedings. 14. SEC. XIV. The coroner and constables serving the process, shall each receive in addition to the fees now prescribed by law, the sum of fifty cents on each execution collected. And that the constable summoning the jury shall receive the sum of one dollar.
- Coroner neglecting duty, to be fined. SEC. XV. All laws and parts of laws militating against this act, be and the same are hereby repealed.
- Coroner to give bond and security.
- Fees for collecting executions.

AN ACT to amend an act entitled "an act concerning Coroners and Inquests," passed Dec. 22d, 1823.—*Approved Feb. 21, 1850.*

15. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall be lawful for the coroners of the several counties of this State, to summon the jury or any part thereof himself, if the services of a constable cannot be conveniently obtained.

16. SEC. II. When it shall so happen that a body lies in an inconvenient place, it shall be lawful for the coroner to remove the body to a place more convenient to hold the inquest. Dead body may be removed.

SEC. III. All laws and parts of laws, militating against this act, be, and the same are, hereby repealed.

AN ACT to compensate Physicians and Surgeons who shall be summoned by the Sheriff or Coroner of the county, to make *post-mortem* examinations for the information of juries of inquest.—*Approved Feb. 23, 1850.*

17. SEC. 1. *Be it enacted*, That from and after the passage of this act, it shall be lawful for every physician and surgeon, who shall be summoned by the sheriff or coroner of the county, to make *post-mortem* examinations for the information of juries of inquest, to charge and receive from the treasurer of the county, the sums [following] to wit:—For each *post-mortem* examination, where death has resulted from external violence, where no dissection is required, the sum of ten dollars. For the same, where dissection is necessary, and where no interment of the body has been made, twenty dollars. For the same after one or more days of interment, thirty dollars. For the same, where any chemical analysis is required, the sum of fifty dollars, and the expense of such analysis. *Provided*, that the compensation allowed in this act, shall not extend to more than one physician for each *post-mortem* examination. Fees of physician or surgeon, for *post-mortem* examinations.

NOTE.—The Physician or Surgeon employed, must make out his bill against the County Treasurer, and be careful to specify, in the language of the statute, the nature of the service performed.—*See the Form.*

AN ACT to prescribe and point out the mode of collecting Coroners' Fees, in the several counties of this State.—*Approved Dec. 22, 1835.*

*Whereas*, the laws of this State defining the duties of Coroners in taking Inquests on the body of a dead person; and also, defining their fees, have not pointed out any mode for the collection of those fees; for remedy whereof—

18. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for the coroners in this State, to issue executions against the property of the person, (or estate, who by the existing laws are liable,) in case of inquisition, for the amount of his fees in said case. Which shall be directed to and levied by a constable of the county, under the same rules and regulations as prevail in justices' courts, in this State. Coroner allowed to issue execution for his fees.

19. SEC. II. The coroner shall be entitled to thirty-one and a fourth cents,  $31\frac{1}{4}$  for issuing for issuing said execution. *fi. fa.*

SEC. III. [Repeals all repugnant acts.]

AN ACT to amend an act entitled "an act to prescribe and point out the mode of collecting Coroners' Fees, in the several counties of this State, passed December 22d, 1835."—*Approved Feb. 9, 1854.*

20. SEC. I. *Be it enacted*, That in all cases of affidavits of illegality, filed to Coroner's executions, issued under the above-recited act, and levied upon the property of any person (or estate, who by the existing laws of this State, are liable,) the same shall be returned by the officer making such levy, to the superior court in the county where such execution issued, who shall determine thereon, under the same rules and regulations as prevail in the superior courts. Illegality filed to Coroner's executions, how and in what court tried.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to reduce the number of Jurors required for Coroners' Inquests, in the counties of this State.—*Approved Feb. 16, 1856.*

Number of  
Coroner's  
Jury. 21. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be lawful for the coroners of this State, to have summoned a jury of inquest, to consist of six persons. Which jury of six, shall be competent to make up and return a verdict.

SEC. II. [Repeals conflicting laws.]

### *Coroner's Bond.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe*  
*Houston County.* } and *John Smith* as securities, all of the State and  
County aforesaid, acknowledge ourselves held and bound to his Excellency *Joseph E. Brown*, Governor of said State for the time being, and his successors in office, in the sum of *five hundred dollars*, subject to the following condition—

The condition of the above obligation is as follows—whereas, the above-bound *John Doe* has been elected Coroner of the County aforesaid. Now, should the said *John Doe*, well and truly, faithfully perform and discharge, all and singular, the duties required of him by law, as Coroner of said County, during the time he may be in office, then the above obligation to be void; otherwise, of force. This *May 1, 1859.*

Approved—

*Charles Anderson, J. I. C.*

*John Ragin, J. I. C.*

*John D. Winn, J. I. C.*

JOHN DOE, *prin'l.* [L. S.]

RICHARD ROE, *sec'ty.* [L. S.]

JOHN SMITH, *sec'ty.* [L. S.]

NOTE.—The Bond should be filed in the Clerk's Office of the Superior Court.

### *Commission.*

STATE OF GEORGIA.—By his Excellency *Joseph E. Brown*, Governor and Commander-in-chief of the Army and Navy of said State and of the Militia thereof, (for the time being.)

*To JOHN DOE, Esq.—Greeting.*

Whereas, you were, on the *first* day of *January*, eighteen hundred and *fifty-nine*, elected Coroner of the County of *Houston*, in said State; I do, by virtue of the power and authority in me vested by law, hereby commission you, the said *John Doe*, Coroner of said County of *Houston*.

You are, therefore, hereby authorized and required to do and perform, all and singular, the duties incumbent on you as Coroner, as aforesaid, according to law and the trust imposed in you.

Given under my hand and the seal of the State, at the Capitol in Milledgeville, this *fifteenth* day of *February*, eighteen hundred and *fifty-nine*, and of the Independence of the United States of America, the eighty-third year.

[L. S.] *By the Governor,*

J. BULOW CAMPBELL, S. E. D.

JOSEPH E. BROWN.

*Recognizance of Witness.*

STATE OF GEORGIA, } Be it remembered, that on the *first* day of *May*,  
 Houston County. } eighteen hundred and *fifty-nine*, *George Hunt* of  
 said County, came before the undersigned, Coroner of said County,  
 and acknowledged himself to owe to his Excellency *Joseph E. Brown*,  
 Governor of said State for the time being, and his successors in office,  
 the sum of *five hundred* dollars; subject to the following condition—

The condition of the above obligation is as follows—that should the  
 said *George Hunt*, well and truly, personally, be and appear before the  
 Superior Court to be held in and for said County, on the *fourth* Mon-  
 day in *October* next, then and there to give evidence, on behalf of the  
 State, concerning the death of *Richard Roe*, and not depart the said  
 Court, without leave thereof, then the above obligation to be void;  
 otherwise, of force.

Approved—*Thomas Styles*, Coroner.

GEORGE HUNT, [L. S.]

*Subpœna for Witness.*

STATE OF GEORGIA, }  
 Houston County. } To JAMES LEWIS—*Greeting*:

You are hereby required to be and appear before me, at *Perry*, in  
 said County, on *to-morrow*, the *second instant*, by *ten o'clock* in the  
*forenoon*, for the purpose of testifying before the Jury, then and there  
 to be empannelled, (on behalf of the State,) and the truth, then and  
 there to tell, touching the death of *John Doe*, whose body has been at  
*Perry*, aforesaid, found dead. Herein fail not under the penalty of  
 the law.

Witness my hand and official signature, this *May 1*, 1859.

THOMAS STYLES, Coroner.

NOTE.—The Coroner should issue process for the attendance of witnesses in favor of the  
 person accused of the death of the deceased, if he be required to do so.

*Coroner's Warrant.*

STATE OF GEORGIA, }  
 Houston County. } To *John Jacobs*, one of the Constables of said County,  
 and to all lawful officers.

Whereas, by an Inquisition taken before me, *this day*, at *Perry*, in  
 said County, it appears that *John Doe*, there found dead, came to his  
 death by the hands of *Richard Roe*. And whereas it appears by the  
 verdict of the Jury of inquest, that the death of said *John Doe* was  
*Murder*. And whereas, said *Richard Roe* is at large. Now, therefore,  
 in order that said *Richard Roe* may be brought to answer said charge,  
 according to law, these are to command you, forthwith to apprehend  
 the said *Richard Roe*, and bring him before me, that he may be dealt  
 with as the law directs. Herein fail not.

Witness my hand and seal, this *May 1*, 1859.

THOMAS STYLES, Coroner. [L. S.]

NOTE.—The Coroner issues his Warrant upon the Inquisition, as a Justice of the Peace  
 does upon the affidavit of the person who applies for one. If the accused person be  
 present, the Coroner must issue a Commitment, without a Warrant being first issued.  
 When the accused person has been arrested under the Warrant, and brought before the



Coroner, he must be immediately committed to jail. No trial is gone into, nor is security for his appearance allowable.

### Commitment.

STATE OF GEORGIA, } To John Jacobs, one of the Constables of said County,  
Houston County. } and to the Keeper of the Jail of said County.

Whereas, *Thomas Burk* is brought before the undersigned, Coroner of said county, charged by an Inquisition held upon the body of *John Doe*, found dead at *Perry*, in said County, on the *first instant*, with being guilty of the *Murder* of said *John Doe*, at *Perry* aforesaid, on the *first instant* aforesaid. These are, therefore, to require and command you, the said Constable, to convey the said *Thomas Burk* to the Jailer of said County. And you, said Jailer, are hereby required to receive the said *Thomas Burk* into your custody in said Jail, and him, in said Jail, safely and securely keep, until he shall be discharged therefrom, by due course of law. Herein fail not.

Witness my hand and seal, this *May 1*, 1859.

THOMAS STYLES, Coroner. [L. S.]

NOTE.—The proceedings before a Coroner are similar to those before a Justice of the Peace; in this respect, the Coroner goes no farther than to ascertain the *probable* guilt of the accused party. A Coroner, however, has no right, under any circumstances, to admit a party to bail, but must, in every case, commit him to Jail.

### Coroner's Writ of Fieri Facias.

STATE OF GEORGIA, } To John Jacobs, one of the Constables of said County,  
Houston County. } and to all lawful officers.

You are hereby required, of the goods and chattels, lands and tenements of *John Doe*, deceased, late of said County, you cause to be made the sum of *thirty* dollars, the amount of Coroner's fees, in the case of an Inquisition held on the body of said *John Doe*, found dead in said County. And have you the said sum of money, together with the further sum of *sixty-two and a half cents*, for this service, before me, at *Perry*, in said County, on the *first day of April* next, with this writ.

Witness my hand and official signature, this *May 4*, 1859.

THOMAS STYLES, Coroner.

### Illegality of Execution.

STATE OF GEORGIA, } *Fi. fa.* issued by Thomas Styles, Coroner, for  
Houston County. } against the Estate of *John Doe*, deceased,  
County, } \$30 and costs.  
late of said County, a J. }  
COUNT, }  
COUNT, }  
COUNT, }

Before the undersigned, Justice of the Peace in and for said County, personally came *James Webb*, Administrator upon the Estate of said deceased, and after being sworn, saith, that he is advised and believes, that the above *fi. fa.* is proceeding illegally against the Estate of the said deceased, on the following grounds, to wit—

*First*—Because, etc. [here set out the ground of illegality.]

*Secondly*—Because, etc.

Sworn to and subscribed,  
before me, this *June 1*, 1859. }  
*James Mack, J. P.*

JAMES WEBB, Adm'r, etc.

NOTE.—The *fi. fa.* and illegality should be immediately filed with the Clerk of the Superior Court, in which Court it is triable.

*Fi. Fa. against Defaulting Juror.*

STATE OF GEORGIA, } *To any lawful officer to execute and Return.*  
 Houston County. } You are hereby commanded, that of the goods and chattels, lands and tenements, of *Wiley Jones*, of said County, you cause to be made the sum of *ten* dollars, a fine imposed upon him for failing to attend as a Juror, on an Inquest held in said County, on the *first* day of *May*, eighteen hundred and *fifty-nine*, on the body of *John Doe*, found dead at *Perry*, in said County. And have you the said sum of money, and all costs, with this Writ, before me, at *Perry*, in said County, on *Monday*, the *twenty-fifth* instant.

*Witness my hand and seal, this May 2, 1859.*

THOMAS STYLES, Coroner. (L. S.)

*Affidavit filed by the Defendant.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
 Houston County. } Justice of the Peace in and for the County afore said, *Rufus Felder*, who being sworn, saith, that his cause of excuse for not attending, as a Juror on the Inquest held on the body of *John Doe*, on the *first* day of *May*, eighteen hundred and *fifty-nine*, is because he was *sick at that time*, and therefore unable to attend.

Sworn to and subscribed,  
 before me, this *May 20*, 1859.

*James Mack, J. P.*

RUFUS FELDER.

NOTE.—The Officer in whose hands the *fi. fa.* and Affidavit are, must file them in the Office of the Clerk of the Inferior Court, in which Court the case is triable.

*Summons for a Juror.*

STATE OF GEORGIA, } *Joel W. Mann*—You are hereby required and  
 Houston County. } commanded, in the name of the State, to be and appear at *Perry*, in said County, by *ten* o'clock in the forenoon of *to-morrow*, the *second* instant, before *Thomas Styles, Coroner*, then and there to be sworn as a Juror, on an Inquest to be held on the body of *John Doe*, there found dead. For the purpose of ascertaining the cause, means and manner, by which said *John Doe* came to his death.

*Witness my hand and official signature, this May 1, 1859.*

JOHN JACOBS, Constable.

*Physician's Bill.*

1859. } The County of *Houston*,  
 May 1. } To *James Esculapius, M. D.* . . . . Dr.  
 Post-mortem examination of the body of *John Doe*,  
 (dissection being necessary; no interment of the  
 body having been made.) . . . . \$20 00

Approved—

*Thomas Styles, Coroner.*

JAMES ESCULAPIUS, M. D.

NOTE.—The Physician should make out his bill as soon as the service is performed, and present it to the County Treasurer for settlement.



*Charge of the Coroner to the Jury.*

*Mr. Foreman and Gentlemen of the Jury.*—I charge you, on the oath you have taken, to ascertain and declare, how *John Doe*, (or a person unknown,) came to his death. Whether he died by murder, manslaughter, misadventure, misfortune, accident or otherwise; and who, and when, and by what means, and in what manner. And if by murder, who were principals and who were accessories. And if by manslaughter, who were the perpetrators, and with what instrument the stroke or wound, was in either case given. And you are to inquire diligently, of all prevailing circumstances which may come by presumption. And if said *John Doe* came to his death by misadventure, misfortune, accident or otherwise, whether by the act of God or man; and whether by hurt, fall, stroke, drowning, or in any other way. And you are to inquire what persons were present at the death of said *John Doe*, (or person unknown, as the case may be;) from whence the deceased came, and who he (or she) was, and his (or her) parents, relations or neighbors; who were the finders of the body; whether killed in the same place where he (or she) was found, or if elsewhere, by whom he (or she) was brought from thence, and of all circumstances relating to the death of the deceased. And you are to inquire generally and particularly, as to every presumeable fact, connected with the death of the said *John Doe*. And the facts of the death being ascertained and discovered, in your Verdict and Inquisition, such facts are to be embodied, and plainly and fully stated.

*Inquisition of Murder.*

STATE OF GEORGIA, } An Inquisition, indented, taken at *Perry*, in  
*Houston County.* } the County aforesaid, the *first* day of *May*,  
 eighteen hundred and *fifty-nine*, before *Thomas Styles*, the Coroner in  
 and for said County, upon the view of the body of *John Doe*, then and  
 there lying dead, upon the oaths of *William H. Talton*, *Marcus Kunze*,  
*Samuel Felder*, *John H. King*, *Claiborn Bateman* and *Joel W. Mann*,  
 good and lawful men of said County; who being sworn and charged  
 to inquire, on the part of the State aforesaid, when, where, how and  
 after what manner, the said *John Doe* came to his death, upon their  
 oaths do say, that one *Thomas Burk*, late of said County, not having  
 the fear of God before his eyes, did on the *thirtieth* day of *April*, *last*  
*past*, with force and arms, at *Perry*, in the County aforesaid, on and  
 upon the aforesaid *John Doe*, then and there being in the peace of  
 God and said State, feloniously, voluntarily and of his malice afore-  
 thought, make an assault. And that the said *Thomas Burk*, then and  
 there, with a certain sword made of iron and steel, of the value of one  
 dollar, which he, the said *Thomas Burk*, then and there held in his  
 right hand, the aforesaid *John Doe*, in and upon the left part of the belly,  
 of the said *John Doe*, a little above the navel of the said *John Doe*, then  
 and there, violently, feloniously, voluntarily and of his malice afore-  
 thought, struck and pierced, and gave to the said *John Doe*, then and  
 there, with the sword aforesaid, in and upon the aforesaid left part of  
 the belly of him, the said *John Doe*, a little above the navel of the said

*John Doe*, one mortal wound, of the breadth of *one* inch, and of the depth of *six* inches. Of which said mortal wound, the said *John Doe*, then and there, *instantly* died. And so, the said *Thomas Burk*, then and there, feloniously killed and murdered the said *John Doe*; against the peace and dignity of the said State.

And the Jurors further say, upon their oaths aforesaid, That *Adam Adams*, of *Pulaski* County, in said State, and *Bush Adams*, of the County of *Twiggs*, in said State, were feloniously present, with *drawn swords*, at the time of the felony and murder aforesaid, in form aforesaid committed; that is to say, on the said *thirtieth* day of *April*, last past, aforesaid, at *Perry* aforesaid, in the County aforesaid, then and there comforting, abetting and aiding the said *Thomas Burk*, to do and commit the felony and murder aforesaid, in manner aforesaid; against the peace and dignity of the State aforesaid.

In witness whereof, as well the aforesaid Coroner, as the Jurors aforesaid, have to this Inquisition signed their names and affixed their seals, on the day and year aforesaid, and at the place aforesaid.

WM. H. TALTON, <i>Foreman</i> , [L. S.]	} <i>Jurors</i>	JOHN H. KING, [L. S.]	} <i>Jurors</i>
MARCUS KUNZE, [L. S.]		CLAIB. BATEMAN, [L. S.]	
SAMUEL FELDER, [L. S.]		JOEL W. MANN, [L. S.]	

I do hereby certify that the foregoing is a true, correct and faithful Inquisition, made before me, the day and year first aforesaid.

THOMAS STYLES, *Coroner*. [L. S.]

### *An Inquisition when one hangs himself.*

[*Begin as above.*] Not having the fear of God before his eyes, at *Perry* aforesaid, in the County aforesaid, in a certain *wood*, then and there standing and being, the said *John Davidson*, being then and there alone, with a certain *hempen cord* of the value of *ten cents*, which he, then and there, had and held in his hands, and one end thereof, then and there, put about his neck, and the other end thereof tied about a *bough* of a certain *oak tree*, himself, then and there, with the *cord* aforesaid, voluntarily and feloniously, and of his malice aforethought, hanged and suffocated. And so the Jurors aforesaid, upon their oaths aforesaid, say that the said *John Davidson*, then and there, in manner and form aforesaid, as a felon of himself, feloniously, voluntarily and of his malice aforethought, himself killed, strangled and murdered; against the peace and dignity of the State aforesaid.

In witness whereof, *etc.*

### *An Inquisition where one drowns himself.*

[*Begin as in the first Form.*] At *Perry* aforesaid, in the County aforesaid, then and there being alone, in a *Creek*, there called *Big Indian*, himself, voluntarily and feloniously drowned. As so the Jurors aforesaid, on their oaths aforesaid, say that the said *William Dash*, in manner and form aforesaid, then and there himself, voluntarily and feloniously, as a felon of himself, killed and murdered; against the peace and dignity of the said State.

In witness whereof, *etc.*



*An Inquisition where one dies a natural death.*

[*Begin as in the first Form.*] That the said *Adam Jones*, on the *thirtieth* day of *April last past*, at *Perry*, in said County, in a certain *outhouse* called the *old barn*, was found dead. That he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way and not otherwise.

In witness whereof, *etc.*

*An Inquisition upon one who dies in Jail.*

[*Begin as in the first Form.*] And the Jurors aforesaid, upon their oaths aforesaid, say that the said *John Doe*, being a prisoner in the Jail at *Perry*, in the County aforesaid, then and there, died of the visitation of God, and then and there, in manner and form aforesaid, on the *thirtieth* day of *April, last past*, came to his death, and not otherwise.

In witness whereof, *etc.*

*An Inquisition upon one non compos mentis.*

[*Begin as in the first Form.*] Jurors aforesaid, who say upon their oaths, that the aforesaid *John Smith*, on the day and year aforesaid, at the time of his death, to wit: from the *third* day of *June, last past*, to the time of his death, and at the time of his death, to wit: the *tenth* day of *September, last past*, was a *Lunatic*, and a person of insane mind. And that the said *John Smith*, being a *Lunatic* and person of insane mind, as aforesaid, did on the said *tenth* day of *September, last past*, come alone to a certain *Creek* called *Big Indian*, in said County, and did then and there, cast himself into the said *Creek*, and drown himself in the water of said *Creek*. And so the Jurors aforesaid, on their oaths aforesaid, say that the aforesaid *John Smith*, from the cause aforesaid, in manner and form aforesaid, came to his death, and not otherwise.

In witness whereof, *etc.*

*An Inquisition upon one who cuts his throat.*

[*Begin as in the first Form.*] Said *James Black*, not having the fear of God before his eyes, at *Perry* aforesaid, in the County aforesaid, in and upon himself, then and there being in the peace of God, and said State, feloniously, voluntarily and of his malice aforethought, did make an assault. And that the aforesaid *James Black*, then and there, with a certain *knife*, of the value of *ten cents*, which he the said *James Black*, then and there held in his *right* hand, himself, upon his throat, then and there, feloniously, voluntarily and of his malice aforethought, did strike and give to himself, then and there, with the *knife* aforesaid, upon his throat aforesaid, *one* mortal wound of the breadth of *four inches* and of the depth of *one inch*. Of which said mortal wound the said *James Black*, at *Perry* aforesaid, in the County aforesaid, languished, and languishing lived, from the said *third* day of *June*, eighteen hundred and *fifty-nine* aforesaid, to the *fifth* day of *June* aforesaid. And that the said *James Black*, on the said *fifth* day of *June* aforesaid,

in the year aforesaid, at *Perry* aforesaid, in the County aforesaid, of the mortal wound aforesaid, died. And so the Jurors aforesaid, on their oaths aforesaid, say that said *James Black*, then and there, in manner and form aforesaid, as a felon of himself, feloniously, voluntarily and of his malice aforethought, himself did kill and murder; against the peace and dignity of said State.

In witness whereof, *etc.*

*For killing another in his own defence.*

[*Begin as in the First Form.*] Jurors aforesaid, upon their oaths aforesaid, say, that *Thomas Kirk*, of said County, at *Perry* aforesaid, in said County, on the *first* day of *June*, eighteen hundred and *fifty-nine*, in the peace of God and said State, then and there being; *Anthony Malice*, late of *Lanier*, in the County of *Macon*, at the hour of *three* in the *afternoon*, of the same day, did come, and upon him the said *Thomas Kirk*, then and there, of his malice aforethought, did make an assault, and him the said *Thomas Kirk*, did then and there, endeavor to beat and kill, by continuing the assault aforesaid, *from the house of one William Hughes*, in *Perry* aforesaid, to a certain place called *the Grove*, in the County aforesaid. And the said *Thomas Kirk*, seeing that the said *Anthony Malice* was so maliciously disposed, to a certain *wall* in the said *Grove*, called *Rockling*, did flee, and from thence, for fear of death, could not escape. And so the said *Thomas Kirk*, himself, in preservation of his life, against the said *Anthony Malice*, continued to defend; and in his own defence, him the said *Anthony Malice*, upon the *right part of the breast* of him the said *Anthony Malice*, with a certain *knife* of the value of *twenty cents*, which the said *Thomas Kirk*, then and there, held in his *right hand*, did strike, then and there, giving to the same *Anthony Malice* one mortal wound, of the breadth of *one inch* and of the depth of *three inches*; of which said mortal wound the said *Anthony Malice*, at *Perry* aforesaid, in the County aforesaid, languished, and languishing lived, from the *third* day of *June* to the *fifth* day of *June*, eighteen hundred and *fifty-nine*. And that the said *Anthony Malice*, on the said *fifth* day of *June*, at *Perry* aforesaid, in the County aforesaid, of that mortal wound, died. And so, the said *Thomas Kirk* did, then and there, kill him the said *Anthony Malice*, in his own defence.

In witness whereof, *etc.*

*An Inquisition where the Murderer is unknown.*

[*Begin as in the first Form, only say, that a certain person unknown, etc.*] And the said Jurors, upon their oaths aforesaid, further say, that the said person unknown, after he had committed the said felony and murder, in manner aforesaid, did escape, against the peace and dignity of the said State.

In witness whereof, *etc.*



*An Inquisition in case of voluntary Manslaughter.*

[*Begin as in the first Form.*].—And the Jurors aforesaid, on their oaths aforesaid, do say, that on the first day of *May*, eighteen hundred and *fifty-nine*, in the County aforesaid, the said *John Doe*, upon a sudden heat of passion, and without malice, then and there, (being assaulted by said *Richard Roe*) upon said *Richard Roe*, with a certain *knife* of the value of *twenty cents*, which the said *John Doe*, in his right hand, then and there held, in and upon the *left side*, immediately under the left arm, of him the said *Richard Roe*, then and there, did unlawfully, feloniously and wilfully strike and thrust, giving to the said *Richard Roe*, then and there, with the *knife* aforesaid, in and upon the *left side*, immediately under the left arm, of him the said *Richard Roe*, then and there, one mortal wound of the breadth of *one inch* and of the depth of *three inches*; of which said mortal wound, the said *Richard Roe*, on the day and year aforesaid, died. And so, the Jurors aforesaid, on their oaths aforesaid, do say, that the said *John Doe*, him the said *Richard Roe*, did then and there kill, in manner and form aforesaid; against the dignity of said State.

In witness whereof, *etc.*

*Evidence taken on an Inquisition.*

STATE OF GEORGIA, } The evidence of *James Lawson*, of said County,  
     *Houston County.* } taken at *Perry*, in said County, on oath before  
 me *Thomas Styles*, Coroner of said County, and before the Jury, then  
 and there sworn to inquire how *James Jones* then and there lying dead,  
 came to his death, who saith that [*here set out fully and at large the evi-*  
*dence of the witness.*] This *May 1*, 1859.

Before me—*Thomas Styles, Cor'r.*

JAMES LAWSON.

*Certificate of the Coroner.*

STATE OF GEORGIA, } I, *Thomas Styles*, Coroner of said County, do  
     *Houston County.* } hereby certify to the honorable Superior Court  
 of said County, that the foregoing contains the proceedings in the case  
 of *Richard Roe*, found dead in said County.

Witness my hand and official signature, this *May 1*, 1859.

THOMAS STYLES, Coroner.

NOTE.—The Inquisition, Bonds of Witnesses, Evidence taken before the Jury, etc., should be, by the Coroner, filed with the Clerk of the Superior Court, as soon as the Inquisition has been made.

## CHAPTER XXXI.

## ESTRAYS.

AN ACT concerning Estrays, and for Improving the breed of Horses.—  
—*Approved Dec. 20, 1791.*

And for the Improvement of the breed of Horses within this State—

1. SEC. XV. *Be it enacted*, That if any stone-horse, above eighteen months old, shall be found running at large, it shall and may be lawful for any person to take up the same; and having taken him before the nearest justice of the peace in the county, by the permission of the said justice, may geld the same; taking care that the operation is performed by a person usually doing such business in the neighborhood; for which the person so gelding shall receive one dollar, to be paid by the owner of the horse: *Provided nevertheless*, that if any person shall take up and geld any such stone-horse, contrary to the true intent and meaning of this act, or without fully pursuing the above direction, he shall, for every such offence, forfeit to the party injured, double the value of such horse; which value shall be ascertained by two respectable freeholders who were acquainted with such horse; who shall act upon oath. To be recovered in any court having cognizance of the same.

Stallions running at large may be taken up and gelded.

The provisions of this act must be strictly observed, or the party will become liable.

AN ACT to revise and amend the foregoing.—*Approved Feb. 15, 1799.*

2. SEC. III. If any person shall presume to sell, or dispose of, or apply to his or their own use, any estray, every such person or persons so offending shall be subject to indictment for a misdemeanor, and on conviction thereof, shall forfeit and pay to the justices of the inferior court, for the use of the county in which such offence may be committed, double the value of such estray or estrays so sold, applied or converted, to his, her or their use.—[*Failing to toll, see 16.*]

Persons selling Estrays for their own use, forfeit double the value of the same.

AN ACT to amend and consolidate the several Estray laws of this State.—  
*Approved Nov. 30, 1801.*

3. SEC. I. It shall and may be lawful for any person upon his own freehold, or other person having charge of such freehold, in the absence of the owner thereof, and not elsewhere, to take up all estrays, whether horse, mare, colt, filly, ass, mule, neat cattle, sheep, goat or hog, that may be found straying away from their owners. And every person taking up estrays as above, shall within ten days, in case such estrays have been broke to service, take or drive it or them, before a justice of the peace in the county, whose duty it shall be, and he is hereby required, to take down in writing, a particular description of the marks, natural and artificial; brands, stature, age and color of such estray or estrays. And immediately to issue his warrant to two or more freeholders of the vicinage, commanding them, having been first duly sworn thereto, well and truly to appraise, or ascertain the value, of such estray, which appraisement or

Who may take up Estrays.

How disposed of.

Duty of the Justice.

Warrant of Appraisement to issue.

Upon the return of the



Appraisem<sup>nt</sup>, valuation and description as above, together with the name of the taker-up and the place of his abode, the said justice shall within ten days there-after, transmit to the clerk of the inferior court of said county; taking special care that the person or persons taking up such estray, do solemnly swear or affirm, that he or they have not altered, or caused to be altered, the marks or brands of such estray; and to the best of his or their knowledge and belief, such marks or brands have, or have not, (as the case may be,) in any wise been altered, and that the owner, to him or them, is unknown.

Certain Estrays must be advertised before being tolled.

After which they must be tolled if not claimed.

Duty of the Justice in issuing his Warrant of Appraisem<sup>nt</sup> and returning the same.

Must keep a copy of the proceedings.

Clerk shall enter certificate in a book.

And affix a copy to the court-house.

Pound to be erected, and Estray Hors<sup>s</sup>, etc., to be conveyed thereto by taker-up. Clerk's duty therein.

Taker-up to forfeit five dollars for every neglect.

Horses, etc., when, where, and how sold.

4. SEC. II. In case any person shall take up any such estrayed neat cattle, sheep, goats or hogs, he shall cause the same to be viewed by a freeholder in the county where the same shall happen, and that the taker-up be compelled to advertise said estrays, at least ten days, at the place of holding justices' courts in said district, prior to tolling. And shall, immediately thereafter, go with such freeholder, before a justice of the peace for said county, and make oath before him, that the same was taken up at his plantation or place of residence in the said county; and that the marks or brands of such estray, have not by him, or to the best of his knowledge, been altered. And then the said justice shall take from the taker-up and freeholder, upon oath, a particular and exact description of the marks, brands, color and age of all and every such neat cattle, sheep, goat or hog; and such justice shall, in manner above directed, issue his warrant for the appraisement of such estrays; which description and valuation, shall by the said justice, within ten days, be transmitted to the clerk of the inferior court, by him to be disposed of as herein-after directed.

5. SEC. III. It shall be the duty of every justice of the peace before whom any estray shall be carried, as aforesaid, to enter a true copy of the certificate transmitted by him to the clerk of the court, in a book to be kept by him for that purpose.

6. SEC. IV. It shall be the duty of the clerk of the inferior court, in each county in this State, and he is hereby required, to receive and enter in a book, by him to be provided and kept for that purpose, all such certificates of description of appraisement, as to him shall be transmitted from the respective justices in the county. And it shall also be the duty of the said clerk of the inferior court, to affix a copy of every such description and valuation, to the court-house of his county, for two terms successively, after the same shall be transmitted to him.—[See 21.]

7. SEC. V. It shall be the duty of the said clerks of the inferior courts, in their respective counties, to cause an enclosure to be made at the court-house, to be paid for out of the moneys arising from the sale of estrays, for the purpose of impounding estrayed horses, mares, colts, fillies, asses and mules; and that all estrays aforesaid, taken up, as aforesaid, shall, by the taker-up, be brought to the said enclosure, and impounded from ten o'clock in the forenoon, until three o'clock in the afternoon, on the first day of every term for twelve months, both of the superior and inferior courts; and the said clerks shall see that these requisitions be complied with by the taker-up. And every taker-up of an estray, as aforesaid, shall for every neglect to impound, as aforesaid, be subject to a fine of five dollars, to be collected by execution, under the hand and seal of the presiding justice of the inferior court, and paid into the clerk's office, for the use of the county, unless sufficient cause to the contrary, be shown to the said court, at the next term thereof.

8. SEC. VI. It shall be the duty of the taker-up, and he is hereby required, to bring to the court-house, in the county wherein he resides, and deliver to the clerk of the inferior court of said county, every estrayed horse, mare, colt, filly, ass or mule, on the first sheriffs' sale day that shall happen after the



expiration of twelve months from the time of entering such estray, as aforesaid, with the justice. And it shall be the duty of the clerk to proceed to sell Clerk to sell. such estray or estrays, as aforesaid, on the day aforesaid, between the usual hours, for ready money, to the highest bidder; which money shall, in the hands of the said clerk, be subject to the order of the inferior court, for county Money how disposed of. purposes, after defraying the charges or fees herein-after directed. And every Taker-up neglecting his duty, how punished. taker-up who shall neglect or refuse to comply with these requisitions, shall be liable for double the amount of the appraisement, to be collected by execution, under the hand and seal of the presiding justice of the inferior court, unless sufficient cause to the contrary be shown the court, at the next term thereafter. And the said forfeiture, when collected, shall be applied to the use of the county, after deducting the legal fees.—[See 16.] Money how applied.

9. SEC. VII. In case any person shall take up, as aforesaid, any neat-cattle, sheep, goats or hogs, and no person or persons shall appear and make satisfactory proof within three months, that the said estrays are his or their property, the justice having given twenty days' notice, by advertisement, in two of the most public places in the captain's district wherein he resides, shall proceed to sell the said estrays, [See 18,] by his constable, upon one of his court-days, between the usual hours, for ready money, to the highest bidder. And it shall be the duty of the justices, in the several counties, and they are hereby required, to pay to the clerk of the inferior court, in their respective counties, at each term of said court, all moneys in their hands that have arisen from the sales of estrays, as aforesaid, deducting five per centum for commissions, and such other charges as are allowed by law; and all moneys so paid shall be subject to the order of the inferior court, for county purposes.—[In the building or repairing of Court-Houses and Jails, or to the support of the Poor, and building Bridges; act of Feb. 21, 1796] No owner appearing, Estray to be sold, and the money applied. Money how applied.

10. SEC. VIII. If any person or persons shall, within the term of two years from the time of such sale, prove to the satisfaction of the court, that the property so sold was his or their own, or that of his or their employers, (as the case may be,) in that case the court shall, after deducting the fees and charges herein-after described, pay the balance of the money arising from such sales, to the claimant of such property. Paid over if claimed within two years.

11. SEC. IX. The justice, for his services as above, shall receive from the Justices' Fees. taker-up, at the time such estray or estrays shall be brought before him, or [the] description or valuation thereof presented to him, as above, the sum of seventy-five cents, for each horse, mare, colt, filly, ass or mule; and the sum of six and one-fourth cents, for each head of neat-cattle, sheep, goats or hogs.—[See 19.]

12. SEC. X. The taker-up of such estrays, shall as a compensation for Taker-up may put Estray maintaining and keeping of the same, put them to immediate labor, if capable of service; and if incapable, or he should prefer it, receive from the owner, if to service, or may receive claimed, or from the court, if sold, a reasonable satisfaction, to be adjudged other compensation for keeping. by the clerk and a justice of the peace for the county, according to the circumstances of the case: *Provided nevertheless* that in case of putting such estray to labor, he shall be bound to produce such estray to the owner, if claimed, or Must produce Estray in good order. to the clerk, if sold, (casualties excepted,) in as good condition as when appraised.

13. SEC. XI. Upon the delivery of any such estray to the legal owner, Compensation or in case of sale, upon the sale thereof, the taker-up shall receive from the to the Taker-up. owner or clerk, as the case may be, the sum of one dollar, for each horse, mare, colt, filly, ass, mule or ox, in addition to the sum by him paid to the justice, and the sum of twelve and a half cents, for each head of neat-cattle, sheep, goats or hogs, in addition to the sums above mentioned, for the keeping and maintenance of the same.—[See 19.]



Clerk's compensation. 14. SEC. XII. The clerk of the said court, shall for the receiving, entering and publishing every certificate as above directed, receive the sum of fifty cents, to be paid by the owner upon claiming the property, or deducted out of the money arising from such property, in case of sale; and the further sum of five per centum, upon the balance of such money, as a compensation for selling, collecting and paying.—[See 19.]

Clerk's duty as to rendering accounts of Estrays. 15. SEC. XIII. It shall be the duty of the clerk of said court, to render to the said inferior court, at every term thereof, a true statement of all moneys arising from the sales of estrays, as aforesaid, accompanied with the proper vouchers, and exhibit a correct statement, as aforesaid, to the grand jury of the county, at every fall-term of the superior court, and oftener if required.

Forfeiture by delinquent Taker-up. 16. SEC. XIV. Any person taking up any estray, as aforesaid, and failing or neglecting to comply with and fulfil the true intent and meaning of this act, and being thereof duly convicted, before the inferior court, shall for every such offence, forfeit and pay a sum equal to double the value of such estray, so neglected to be tolled and advertised, as aforesaid, to be recovered by suit or action at law; the informer to be the plaintiff in the action. One half of the sum so recovered, to the use of the informer, the other half to the use of the county.

Forfeiture of Justice and Clerk, failing to do their duty. 17. SEC. XV. If any justice or clerk shall refuse or neglect to perform the duties required by this act, each justice or clerk neglecting or refusing, shall for every such neglect or refusal, forfeit the sum of twenty dollars; one moiety to be paid to the party informing, and the other moiety to the use of the county where such offence shall be committed; to be recovered by action of debt, in any court having cognizance of the same. And shall, moreover, be liable to an action of damages to the party injured, and upon conviction, pay double costs.

SEC. XVII. [Repeals all laws on the subject, repugnant to this.]

AN ACT to amend the 7th and 11th sections of the foregoing act.—*Approved Dec. 7, 1803.*

Neat-cattle not to be sold under twelve months. [Three months—see 30.] 18. SEC. I. From and after the passing of this act, no neat-cattle taken up as estrays, shall be sold under twelve months [see 30] from the time of being tolled. And it shall be the duty of the clerks of the inferior courts, previous to the advertisement and sale of such estrays, by the justice before whom they may have been tolled, to advertise at the door of the court-house, all such estrays, on the first day of every succeeding term of the superior and inferior courts, which may happen in the county within the said term of twelve months.

Fees of the Clerk and the Taker-up. 19. SEC. II. The respective clerks of the inferior courts, shall be entitled to receive, as full compensation for each estray so advertised, twenty-five cents, and the persons taking up such estrays, shall be allowed a reasonable compensation for their trouble, to be adjudged by the justices of the district where such estray may be tolled, or any two justices of the county. Any thing contained in the before-recited act, to the contrary thereof, notwithstanding.

Justice's fees. 20. SEC. III. The justice for his services, exclusive of commissions, shall receive the sum of twenty-five cents.

AN ACT to alter and amend the several Estray Laws now in force in this State.—*Approved Dec. 4, 1816.*

Clerk's must advertise in certain newspapers. 21. SEC. I. From and after the first day of March next, it shall be the duty of the clerks of the inferior courts of this State, respectively, within ten days after they or either of them may have received from any justice



of the peace, (of the county for which he is the clerk,) before whom any estray horse, mare, colt, gelding, filly, ass or mule, may have been posted, in conformity with the estray laws now in force in this State, a description of such estrayed horse, mare, colt, gelding, filly, ass or mule, to advertise such estray or estrays, according to the description thereof, which he may have received, as aforesaid, in the Georgia Journal, Augusta Chronicle or Savannah Republican. And the proprietors of said papers shall receive as compensation for the publication of each such estray, the sum of one dollar and fifty cents. [This provision has been changed in many Counties.]

22. SEC. II. The said clerks, respectively, shall be authorized to pay, out of the moneys arising from the sales of estrays, the expense incurred for such advertisement or advertisements, unless it should so happen that the owner or owners of such estray or estrays, may prove them or either of them away, previous to sale; then, and in that case, it shall be the duty of such clerk, to demand and receive of the owner or owners of such estray or estrays, the full amount of the expenses incurred for such advertisement or advertisements, previous to the delivery of such estray or estrays. Advertisements by whom paid for.

23. SEC. III. The clerks of the inferior courts aforesaid, shall be entitled to the sum of fifty cents for transmitting the description of said estrays; from the owners, if proven away, or from the proceeds of the sale of such estray, if sold. Clerks' fees for advertisement.

24. SEC. IV. In all cases where expenses have been incurred, arising under this act, by advertising such estray or estrays, it shall be the duty of the said clerks, respectively, to remunerate such expense out of the money arising from the sale of such estrays. And it shall be the duty of all such clerks, to keep a fair and regular book of entry of all such expenditures, to exhibit to the inferior courts of their counties, respectively, upon application. Clerk shall pay for advertising, and keep an Estray-book.

AN ACT to compel the Clerks of the Inferior Courts, of the different Counties in this State, to claim Estrays when levied on by execution.—*Approved Dec. 26, 1831.*

*Whereas*, there is a practice prevailing in many of the Counties in this State, with plaintiffs in execution, to hunt out estrayed property and have their executions levied on the same. *And whereas*, there is no provision by law, for any person to claim said property for the benefit of the County where the same may occur; for remedy whereof—

25. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall be the duty of the justices of the peace, and constable or constables, of each captain's district, in every county in this State, to notify the clerk of the inferior court of the county wherein they reside, whenever it comes within their knowledge, or when they have any reason to believe that any execution has been levied on estrayed property.—(See 31 and 32.) Notice must be given to the Clerk of levies on Estrays.

26. SEC. II. In all cases where the clerks of the inferior courts of the different counties in this State, (see 29,) shall receive the information aforesaid; (and also, where the fact may come within their own knowledge,) [it shall be lawful] for them to hand a written notice to the constable or sheriff, as the case may be, who may have levied on any estrayed property, stating that he claims the said property for the benefit of the county, as an estray; which said notice shall be sufficient to compel the constable or sheriff, as the case may be, to return the said *fi. fa.* or *fi. fas.* and notice, to the next justices' court of the district wherein the levy may have been made, if the said *fi. fas.* issued from a justices' court; or if the same issued from an inferior or superior court, then and in that event, to the next inferior or superior court of the county wherein the levy may have been made. Clerk, [Taker-up] shall claim for the County. How claim to be made and returned.

27. SEC. III. When any notice, with the execution, as aforesaid, shall be



Issue to be made up and tried. returned to any of the courts aforesaid, it shall be the duty of the court, to cause an issue to be made up between the said clerk of the inferior court and the plaintiff in execution, which shall be tried in the same manner as all other claim cases; the burden of proof resting on the plaintiff in execution.

Costs how paid. 28. SEC. IV. In all cases where the issue shall be determined against the clerk, the county shall pay the cost.

AN ACT to alter and amend an act entitled "an act to compel the Clerks of the Inferior Courts, of the different Counties in this State, to Claim Estrays when levied on by execution," passed the 26th December, 1831.—*Approved Dec. 23, 1840.*

Notice must be given to the Taker-up, who shall claim for the County. 29. SEC. I. *Be it enacted*, That from and after the passage of this act, all constables in whose hands executions may be placed for the purpose of levying on estrays, the said constable in whose hands such execution is placed, shall notify the taker-up of all such estrays, that he has levied such execution on the estray or estrays, posted by him or her. And upon such notice being given to the taker-up, it shall be [*his duty*] and he is hereby required to claim all estrays levied on by such constable, and to notify such constable that he has claimed such estrayed property for the benefit of the county. Which claim shall be returned and disposed of in the same manner as claims made by the clerks of the inferior court, agreeably to the above-recited act.

SEC. II. [Repealing section.]

AN ACT to amend "an act to amend the Estray Laws of this State, so far as relates to the time of advertising and tolling Horned-Cattle, Sheep, Goats or Hogs, before they are sold," assented to December twentieth, eighteen hundred and twenty-three.—*Approved Dec. 26, 1845.*

Cattle, etc., sold after three months. 30. SEC. I. *Be it enacted*, That from and after the passage of this act, all horned-cattle, sheep, goats and hogs, that may be tolled, in conformity with the estray laws now in force in this State, may be sold at the expiration of three months from the time they are tolled.

SEC. II. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to point out and punish certain Frauds therein specified. And to render null and void such conveyances and Transfers, as may be thereby obtained.—*Approved Dec. 25, 1837.*

Levies on Estrays and vacant Lands, fraudulent, and party punishable. 31. SEC. I. *Be it enacted*, That any person or persons who shall, after the passing of this act, fraudulently cause to be levied on, by any process or execution, distress or attachment, any estray animal, or any lot or lots of land, knowing the same not to be subject thereto, shall be guilty of a misdemeanor, and on indictment and conviction thereof, such person or persons shall for the first offence, be fined and imprisoned at the discretion of the court. And for a second offence under this act, the person or persons convicted, shall be punished by confinement at hard labor, in the penitentiary, for any time not less than two years, nor longer than four years.

Conveyances void. 32. SEC. II. Any and all conveyances or transfers, obtained under any such levy or levies, shall be null and void.

### *Notice to the Clerk.*

STATE OF GEORGIA, } To the Clerk of the Inferior Court of said  
Houston County. } County.

John Doe, of the 619th District, G. M., tolls before me, as an Estray, taken up upon the freehold of him, the said John Doe, in said County

and District, a *Bay Horse Mule*, a good deal marked with the collar, branded with the letter *G* on the right shoulder, four feet two inches high, about six years of age, appraised by *Thomas Black* and *William Green*, freeholders of said County and District, to be worth fifty dollars.

Given under my hand and official signature, this May 1, 1859.

JAMES MACK, J. P.

### *Oath of Taker-Up.*

You do solemnly swear, that you have not altered, or caused to be altered, the marks or brands of a *Bay Horse Mule*, tolled by you before me, *this day*, and to the best of your knowledge and belief, such marks or brands have not, (or have, as the case may be,) been altered, and that the owner to you is unknown; and that you took up said *Mule*, on your freehold, on the 25th day of *April*, last past—so help you God.

### *Warrant to Appraisers.*

STATE OF GEORGIA, } To *Thomas Black* and *William Green*, freeholders,  
Houston County. } of the 619th District, G. M.

Whereas, *John Doe*, of said District, tolls before me, a *Bay Horse Mule*, a good deal marked with the collar, branded on the right shoulder with the letter *G*, four feet two inches high, about six years of age; you are hereby authorized and required, having first been duly sworn thereto, well and truly to appraise and value the said *Mule*, to proceed to value and appraise said *Mule*, and said valuation and appraisement, so made, to certify to me.

Given under my hand and seal, this May 1, 1859.

JAMES MACK, J. P. [L. S.]

### *Oath of Appraisers.*

You, and each of you, do solemnly swear, that you will, well and truly, appraise and ascertain the value of a certain *Bay Horse Mule*, tolled as an estray, by *John Doe*, before *James Mack*, Justice of the Peace, to the best of your skill and ability—so help you God.

### *Return of Appraisers.*

STATE OF GEORGIA, } To *James Mack*, one of the Justices of the Peace,  
Houston County. } in and for the 619th District, G. M.

By virtue of a Warrant, to us directed, having first been sworn, before *Samuel Jones*, a Justice of the Peace, we proceeded, *this day*, to value a certain *Bay Horse Mule*, taken up, as an Estray, by *John Doe*: we appraised said *Mule* at, and think him to be worth, the sum of fifty dollars.

Given under our hands and official signatures, this May 1, 1859.

THOMAS BLACK, }  
WILLIAM GREEN, } Freeholders.



*Certificate of the Justice.*

I certify that the foregoing contains the proceedings, in the case of tolling a certain *Bay Horse Mule*, before me, by *John Doe*.

*Given under my hand and official signature, this May 1, 1859.*

JAMES MACK, J. P.

*Estray Notice by Taker-Up.*

STATE OF GEORGIA, } On the 25th day of *April, last past*, an estray  
*Houston County.* } *Ox*, of the following description, took up at my  
*plantation*, in the 619th District of said County, viz: marked with an  
*underbit in each ear, points of his horns sawed off, branded on the right*  
*side with the letter O, brindled color*; supposed to be seven years old, and  
 appraised to be worth *ten dollars*. The said *Ox* has been viewed by  
*Nathan Forsythe*, a freeholder of said District, and will be otherwise  
 dealt with, as the law directs, if not taken away by the owner. This  
*May 1, 1859.*

JAMES JONES, *Taker-up.*

*Affidavit of Taker-Up.*

STATE OF GEORGIA, } Personally appeared before me, *James Jones*,  
*Houston County.* } taker-up of an estray *Ox*, who being sworn, says  
 that said *Ox* took up at his *plantation*, in the 619th District, G. M.,  
 in said County, and that the marks and brands of said *Ox* have  
 not, by him, or to the best of his knowledge, been altered; that said  
*Ox* has been advertised, agreeably to law, in such case, and that he  
 has been viewed by *Nathan Forsythe*, a freeholder of said County, and  
 appraised to be worth *ten dollars*.

Sworn to and subscribed,  
 before me, this *May 10, 1859.* }

*James Mack, J. P.*

JAMES JONES.

*Affidavit of Taker-Up and Freeholder.*

STATE OF GEORGIA, } Personally appeared before me, *James Jones*,  
*Houston County.* } of the 619th District, G. M., taker-up of an  
 estray *Ox*, and *Nathan Forsythe*, a freeholder, of said District and  
 County, who, being duly sworn, say that a certain *Ox*, which has been  
 taken up, by said *James Jones*, as an Estray, is of the following descrip-  
 tion, to wit: marked with an *underbit in each ear, points of his horns*  
*sawed off, branded on the right side with the letter O, brindled color* sup-  
 posed to be seven years old, and appraised to be worth *ten dollars*.

Sworn to and subscribed,  
 before me, this *May 10, 1859.* }

*James Mack, J. P.*

JAMES JONES, *Taker-up.*

NATHAN FORSYTHE, *Freeholder.*

*Notice by the Clerk.*

GEORGIA—HOUSTON COUNTY.

CLERK'S OFFICE, of the *Inferior Court*.

All persons concerned, are hereby notified, that *James Mack*, a  
 Justice of the Peace, in and for the 619th District, G. M., transmits to

me, the following certificate of an estray *Ox*, to wit: (*here insert a full description of the Estray, as returned by the Justice of the Peace.*)

*A true extract from the Estray Book, this May 15, 1859.*

WILLIAM H. WHEELER, *Clk I. C.*

### *Estray Notice by the Clerk.*

#### GEORGIA—HOUSTON COUNTY.

CLERK'S OFFICE, INFERIOR COURT, *May 1, 1859.*

All persons interested are hereby notified, that *John Doe*, of the 619th District, G. M., tolls before *James Mack*, one of the Justices of the Peace, for said District, as an Estray, a *Bay Horse Mule*, a good deal marked with the collar, branded with the letter *G* on the right shoulder, four feet two inches high; about six years of age; valued by *Thomas Black* and *William Green*, freeholders of said County and District, to be worth fifty dollars. The owner of said Estray is required to come forward, pay charges, and take said *Mule* away, or he will be dealt with as the law directs.

*A true extract from the Estray Book.*

WILLIAM H. WHEELER, *Clk I. C.*

### *Notice by the Constable.*

STATE OF GEORGIA, }  
Houston County. }

To *James Jones*, of the 619th District, G. M.

You are hereby notified, that I have, *this day*, levied an execution, issued from the Justices' Court of the 600th District, G. M., in favor of *John Kent* against *Richard West*, upon a *brindled Ox*, tolled by you as an Estray, before *James Mack*, a Justice of the Peace for said County. Said *Ox* is advertised to be sold on the *fourth* Saturday in the present month. *This May 1, 1849.*

JOHN JACOBS, *Constable.*

### *Notice by the Taker-up.*

STATE OF GEORGIA, }  
Houston County. }

To *John Jacobs*, Constable.

You are hereby notified, that as taker-up of a *brindled Ox*, tolled by me, as an Estray, before *James Mack*, a Justice of the Peace in and for the 619th District, G. M., which *Ox* has been levied upon by you, by virtue of a *fi. fa.* in favor of *John Kent* against *Richard West*, issued from the Justices' Court of the 600th District, G. M., and to be sold on the *fourth* Saturday in the present month; is not the property of said *Richard West*, and is not subject to said *fi. fa.*, but said *Ox* is an Estray, the owner whereof is unknown, I; therefore, claim said *Ox*, for the benefit of said County, as an Estray. You are, therefore, required to return this notice to the next Justices' Court, in and for the 619th District, G. M., to be held on the *fourth* Saturday in the present month, that the right to the said *Ox* may, then and there, be tried. *May 1, 1859.*

JAMES JONES, *Taker-up.*



*Issue.*

JOHN KENT } *Fi. fa.* from Justices' Court, 600th District, G. M.  
*vs.* } *May Term, 1846.*  
 RICHARD WEST. }

And now at this term, comes the plaintiff in execution, and says that a certain *brindled Ox*, which has been levied upon with the above *fi. fa.*, and claimed by *James Jones*, taker-up, is the property of the defendant, *Richard West*, and as such, subject to the said *fi. fa.*, and of this he puts himself upon the country, &c.

JOHN KENT, *Pl'ff in fi. fa.*

And now, at this term, comes the claimant, and says that said *brindled Ox* is an *Estray*; that he is not the property of said *Richard West*, and is not subject to said *fi. fa.*, and doth the like, &c.

JAMES JONES, *Taker-up.*

*Verdict.*

We, the jury, find the property an *Estray*, and *not* subject to the *fi. fa.*

WILLIAM CONE, *Foreman.*

*Judgment.*

Whereupon, it is considered by the Court, that said *Ox* is an *Estray*, and is *not* subject to said *fi. fa.* And it is further ordered, that *John Kent*, plaintiff in *fi. fa.*, pay the claimant, *James Jones*, taker-up, the sum of *three* dollars, for his costs and charges laid out and expended, and the plaintiff in *fi. fa.* in mercy may, &c. Judgment signed this *May 1, 1859.*

JAMES MACK, J. P.

## CHAPTER XXXII.

## PROVISION FOR THE POOR.

Justices of the  
Inferior Court  
must provide  
for the poor.

AN ACT to be entitled an act to protect the Estates of Orphans, and to make permanent provision for the Poor.—*Approved Dec. 18, 1792.*

1. SEC. XIV. *Be it enacted*, That the inferior courts in the several counties in this State shall have power to inquire into the circumstances of the poor, bind out orphans, and appoint guardians, in the manner pointed out by law, and appoint overseers over the poor: *Provided*, that no justice of the inferior court shall be appointed an overseer of the poor. And the said justices and overseers of the poor, shall have power to levy annually a tax, and assess all taxable property returned in their respective counties, not exceeding one-fourteenth part of the general tax of such county, annually; which shall be collected by the tax collector of the county, who shall be allowed at and after the rate of five per centum on the net amount of such collection; and who shall, at the first inferior court, after the first Monday in May annually, make to the justices of the inferior court, a true return of the state of the collection of such tax; and a report

in writing of his proceedings, and shall therein fairly state the amount of his collection. And that the tax collector's statements and collections, so made up, shall be filed of record in the clerk's office, open to the inspection of any person interested therein. And in case any person or persons shall refuse or neglect to pay such tax, it shall and may be lawful for the sheriff of the county, to distrain for the same, in like manner as the collectors are authorized to distrain for the general tax; and shall have the like commissions therefor. And the money arising from the said tax, shall be paid into the hands of the said overseers, for the relief of the poor. And the said overseers shall, once in every year, make up their accounts and lay the same before the justices of the said court, who shall express their approbation or disapprobation of the same on the back of the said accounts so to be produced.

Overseers must make returns.

AN ACT to alter and amend the fourteenth section of an act, entitled an act to protect the Estates of Orphans, and to make permanent provision for the Poor.—*Approved Nov. 24, 1818.*

Poor tax to be one-eighth of general tax.

Whereas, it is found by experience that the provision made for the Poor, in the above-recited act, is insufficient for their support—

2. SEC. I. *Be it enacted, &c.,* That the justices of the inferior courts of the different counties in this State, are hereby authorized and empowered to levy a tax, and assess all taxable property returned in their respective counties, not to exceed one-eighth part of the general tax of such county, annually; and that it be collected in the same manner, and under the same restrictions, as prescribed in the above-recited act.

SEC. II. So much of the before-recited act as militates against this act, is hereby repealed.

### *Petition for Relief.*

STATE OF GEORGIA, } *To the Inferior Court of said County.*  
 Houston County. } The petition of *John Doe*, one of the Poor of said County, sheweth that your Petitioner is now *seventy* years of age; that he has no property; that from his age and infirmities, he is unable to support himself. Wherefore, Petitioner prays the Court to make such provision for his support and maintenance as to the Court shall seem reasonable and proper. And Petitioner will ever pray, &c. This *January 1, 1858.* JOHN DOE.

### *Order by the Court.*

Upon the Petition of *John Doe*, one of the poor of said County, it is ordered, that the sum of *ninety-six* dollars be and the same is hereby allowed for the support and maintenance of said *John Doe*, for the present year. And it is further ordered, that said sum be placed in the hands of *Richard Roe*, for the purpose of being disbursed for necessities, for said *John Doe*.

*Extract from the Minutes of said Court, this January 10, 1858.*

JOHN H. KING, Clerk.

### *Return of Richard Roe, Overseer.*

STATE OF GEORGIA, } *To the Inferior Court of said County.* The  
 Houston County. } undersigned, appointed by the Court to provide for the support and maintenance of *John Doe*, one of the poor of said



County, for the year 1858, hereby submits the report of his actings and doings in the premises. This *January 1, 1859.*

1859, <i>January 1.</i>		D'r.	1859, <i>January 1.</i>	C'r.
Rec'd of County treasurer . . .	\$48 00		200 lbs Flour, \$10 00.	100 lbs
Aug. 1. Rec'd " " . . .	48 00		Sugar, \$10 00.	300 lbs Bacon,
			\$36 00.	50 lbs Coffee, \$8 00.
			2 Blankets, \$6 00.	10 bushels
			Meal \$5 00.	5 bushels Pota-
			atoes, \$3 00.	1 Coat \$5 00.
			1 pr Pants, \$3 00.	2 Flannel
			Shirts, \$5 00.	1 pr Boots, \$2 50.
			1 pr Shoes \$2 50.	
				\$96 00

RICHARD ROE.

### *Endorsement on the Overseer's Return.*

Approved and ordered to be filed in the Clerk's Office.

NOTE —The Vouchers must accompany the Return; be presented to the Court, and filed away with the Return.

## CHAPTER XXXIII.

### PATROL.

AN ACT for establishing and regulating Patrols, and for preventing any person from purchasing Provisions, or any other Commodities from, or selling such, to any slave, unless such slave shall produce a Ticket from his or her owner, manager or employer.—*Approved Nov. 18, 1765.*

*Whereas*, it is absolutely necessary for the security of his Majesty's subjects, of this Province, and for preventing the many dangers and inconveniences that may arise from the disorderly and unlawful meetings of Negroes and other slaves within the same, that Patrols should be established, under proper regulations, in such parts of the Province where the militia is formed and settled. *And whereas*, it is also proper to prevent dealing and trafficking, with slaves—

1. SEC. I. And wherein the owners of settled plantations, as well as the other inhabitants of any such patrol division, as well alarm-men as others of horse and foot, between the age of sixteen and sixty years, [see 16,] shall be subject to the patrol duty of that division, and shall, either by themselves in person, or by others employed for that purpose, do their patrol duty regularly and successively, according to the true intent and meaning of this act. And as all persons, as well women [see 8,] as men, who are or may be owners of settled plantations in any parish or district, ought in justice to contribute to the service and security of such parish or district, *Be it therefore enacted*, That the captains or commanding officers of each company of foot militia, shall in their districts make out and keep, from time to time, a special patrol list for every subdivided and distinct patrol division, in which list shall be inserted the names of all owners of settled plantations being within the same, as well women as men, and

Who liable to  
do Patrol  
duty.

May employ  
Substitute.

List of names.

as well alarm-men as others; and also, the names of all the male white inhabitants: *Provided*, that every person having several plantations settled in this province, shall not be subject to, or obliged to do patrol duty in those divisions where such plantations lie, other than in such in which he or she, shall usually reside: *Provided also*, that the masters and employers of all white male servants, who by this act are obliged to do patrol duty, shall and they are hereby directed and obliged to furnish such servants with a horse and furniture for such service, and that under the penalty of one pound; to be recovered and applied in like manner as the penalties on captains or commanding officers, in this act before-mentioned.

Persons own-  
ing several  
Plantations  
to do duty  
where he re-  
sides.

White serva'ts  
to be provid'd  
for by employ-  
er.

2. SEC. II. *Provided always*, that it shall and may be lawful for any persons liable to do and perform the patrol duty prescribed by this act, and who may not choose to do duty in person, to employ a sufficient person, to do, perform and undertake such duty, on his, her or their behalf, when their names shall be pricked off, as aforesaid.

Substitute  
may be em-  
ployed.

3. SEC. IV. [*Fines against defaulting patrol-man*,] to be levied by distress and sale of the offender's goods, by virtue of a warrant for that purpose, directed to the constable of the district, [or sergeant of such company,] under the hand and seal of the captain or commander of the company [*commissioners—see 13*,] from which such patrol, where such neglect, default or misdemeanor, may happen or be committed, [shall be pricked off;] which constable, [or sergeant,] shall be obliged, and are hereby severally authorized and empowered, to execute the same; and shall be allowed for executing the warrant, the sum of one shilling, and mileage, as is herein-before directed. And every constable, [or sergeant,] refusing and neglecting to serve such warrant directed to him, shall be liable to a fine, not exceeding the sum [*of*] forty shillings sterling.

Fines how col-  
lected.

*Fi. fa.* by  
whom issued.

Constable to  
collect fines.

Constable to  
be fined for de-  
fault.

And that the said patrols may be the better able to suppress any mischievous designs of negroes and other slaves, during their term of service—

4. SEC. V. That every person pricked off or appointed, or undertaking as a proxy for any other person liable to serve in the said patrol, in pursuance of or by virtue of this act, shall provide for himself, and keep always in readiness, and carry with him on his patrol service, one good gun or pistol, in order; with six cartridges suitable for such gun or pistol, and one good cutlass; under the penalty of a sum not exceeding ten shillings, for want of any such arms or ammunition, at such times and places as they shall be appointed by their respective commanders, in their several divisions, to whose orders they shall, on all occasions, be respectively obedient, during their term of service.

How Patrol-  
man to be  
armed.

And must  
obey orders.

5. SEC. VI. Every patrol shall go to and examine the several plantations in their divisions, at such times as in their discretion [*see 12 and 18*,] shall see fit, one night in fourteen [*see 12 and 18*,] at least; and may and shall take up all slaves which they shall see without the fences or cleared-ground of their owners' plantations, who have not a ticket or letter, or other token, to show the reasonableness of their absence; or who have not some white person in company to give an account of his, her or their business. And such patrol may correct every such slave or slaves, by whipping with a switch, whip or cowskin, not exceeding twenty lashes. And the said patrols shall have full power to search and examine all negro-houses for offensive weapons and ammunition, and on finding any such, contrary to the before-recited act, [*the act referred to did not go into operation*,] shall proceed as therein directed. And if any patrol shall see any fugitive slave or slaves, endeavoring to avoid them by hiding or running into, or shall hear of any such being harbored in any dwelling-house of a white person, the commander shall ask leave of the owner of the said

Power of Pa-  
trol.

How to pro-  
ceed in cases  
of fugitive  
slaves.



dwelling-house, or of some white person then there, to search for, examine and apprehend the said fugitive slave, or that the said owner should deliver up said slave or slaves; and in case the said owner, or other white person so entreated, shall refuse to deliver up such fugitive slave or slaves, or to suffer search to be made for them, (the said patrol, or any other white person, having seen such slaves enter,) such person so refusing, shall forfeit the sum of five pounds for every such offence.

*And whereas*, many irregularities may arise by patrols drinking too much liquor before or during the time of their being on duty—

Drunkenness  
on duty how  
punished.

6. SEC. VIII. *Be it further enacted*, That any person whatever, who shall be drunk during the time of his service on the patrol, shall be subject to the penalty of a sum not exceeding ten shillings, to be recovered by warrant from any justice of the peace, [*commissioners*,] upon oath first made thereof, the same to be applied to the use of the highways in the respective districts where the offence shall happen.—[*To be paid into the County Treasury*.]

And for the better enforcing the performance of the several duties required by this act—

SEC. XI. *Be it enacted*, [Relative to field-officers seeing to the execution of this act-superseded.]

Double costs  
allowed.

7. SEC. XII. And if a verdict shall pass against the plaintiff or plaintiffs, or that such plaintiff or plaintiffs shall suffer a non-suit, or discontinuance of his or their action or suit, then and in every such case, the court where such action shall be depending, shall tax and allow to the defendant, his or their double costs, in every such suit or action.

AN ACT to discharge Females from the performance of Patrol-duty.—*Approved Dec. 24, 1824.*

Female not  
liable to pa-  
trol-duty.

8. After the date of this act, no female in this State, shall be subject to the performance of patrol-duty.

AN ACT to amend the Patrol Laws of this State.—*Approved Dec. 21, 1839.*

*Whereas*, doubts exist in regard to the legal permits granted slaves and free persons of color; therefore—

Requisites of  
written Pass,  
for slave or  
free person of  
color.

9. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be the duty of every owner, overseer, trustee, guardian or other person or persons, having control of any slave or slaves, or free person of color, in granting or giving written permits to the same, to set forth the time allowed for their absence, and distinctly designate the place or places where such slave or free person of color desire to visit.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Written Pass or Permit.*

STATE OF GEORGIA, } The bearer of this, *George, a slave*, has permis-  
Houston County. } mission to be absent until *to-morrow evening*, and  
to visit the town of *Perry*, in said county.

ISHAM MADDOX, *Overseer.*

Patrol-Com-  
missioners to  
be appointed.

AN ACT to amend the Patrol Laws of this State.—*Approved Feb. 20, 1854.*

10. SEC. I. *Be it enacted*, That it shall be the duty of the justices of the inferior courts of the several counties in this State, at the first term of said



courts after the passage of this act, and annually, at the first term of said courts in every year, to appoint three proper and suitable persons, in each militia district of their respective counties, who shall be known and designated as patrol-commissioners, whose duty shall be as herein-after specified. And the clerks of the inferior courts are hereby required to notify said commissioners of their appointment, in the same manner and under the same penalty, as they are now required by law to notify road-commissioners of their appointment. And in the event any person designated as commissioner does not tender his resignation to some one of the justices of the inferior court within ten days after being duly notified by the clerk, he shall be considered as having accepted of the appointment; and in case of refusal, resignation or death, the inferior courts shall fill the vacancies produced, in the same way as is now provided for filling vacancies occasioned by the refusal, or resignation, or death, of road-commissioners.

Clerk must notify them.

Within what time Commissioner may resign.  
Vacancies how filled.

11. SEC. II. That the said commissioners, after having taken an oath, faithfully to discharge their duties, as prescribed by this act, shall within fifteen days after being notified of their appointment, at the court-house or at some place which they may select, in the district in which they reside, (and) make out a list of the names of all persons in their district, who are required by the laws now of force [see 1,] to perform patrol duty; and arrange and organize from said list, two or more companies, not having more than ten in each company. And the said commissioners shall lay off their respective districts, into as many divisions as they shall organize companies, and assign to each company a division. And no company shall be compelled to perform patrol duty beyond the limits of the division which may be assigned to it.

Commissioner's to take an oath, and proceed to organize Patrol companies and divisions.

12. SEC. III. It shall be the duty of the said commissioners, from each company which may be organized, to select and appoint some discreet person, as captain, who shall be of good moral character, and not less than twenty-five years of age. And the person so selected shall have the same authority as the captains of patrols now have, and shall demean himself, in every respect, as he is now required to do by the laws of this State. The captains of patrols shall be notified of their appointment in writing, within ten days after the meeting of the commissioners, and the notification to each captain shall be accompanied with a list of the names of the persons belonging to his company. And a notice of only one day, from the captain to the members of his company, shall be sufficient to require an attendance at the time and place the captain may direct, and perform the duties which may be required. If any commissioner or commissioners shall fail or neglect to discharge the duties which are herein required, within twelve months after their appointment, without a good and reasonable excuse, to be judged of by the justices of the inferior court, he or they shall be fined by said court, in a sum not exceeding twenty dollars, for every failure or neglect. And if the captains of patrol-companies shall refuse, fail or neglect to call out their companies within twenty days after being notified of their appointment, and as often as once every fifteen days thereafter, during the six months ensuing, from the time of their appointment, they shall be fined by the commissioners, upon sufficient proof thereof being made to them, in a sum not exceeding ten dollars, for every such refusal, failure or neglect. And if any person belonging to a company, after being duly summoned or notified, shall fail or refuse to attend at the time and place designated for the purpose of performing patrol-duty; or when in active service, shall deport himself insolently to the captain; or in any manner, contrary to the existing patrol-laws, he shall be fined in a sum not exceeding five dollars for every such offence.

Captain's qualifications.

Captain's authority, and demeanor.  
Captain to be notified of his appointment, etc.

Captain must notify Patrolmen, etc.

Commissioner failing to discharge his duty, to be fined.

Captain to be fined for neglect of duty.

Disobedient Patrol-men to be fined.

13. SEC. IV. It shall be the duty of the captains to report all delinquencies to the commissioners, within twenty days after they may occur. And all cases of disobedience, or insubordination, or default, shall be considered and deter-

Captain to report default's.



Fines how collected.  
Fines how disposed of.  
All persons opposing Patrols to be indicted and fined.

Only citizens of district to enforce the fine.

Act of 1765 continued in force.

mined by them, in the same manner as road-commissioners now consider and determine cases of default, as to overseers and persons subject to work on roads. And all fines imposed, shall be collected in the same way as the law now prescribes for the collection of fines imposed on defaulting overseers and persons liable to work on roads. And all fines imposed and collected by this act, shall be paid to the ordinary or commissioner of the poor-school fund of the county, and become part of said fund.

14. SEC. V. That if any person or persons whatsoever, shall by force or otherwise, oppose any patrol-company, or member of any company, whilst engaged in the discharge of their legitimate duties; or shall prevent or endeavor to prevent a search and examination being made, of negro-houses, or any other place where it may be supposed or suspected that any negro, liable to be punished, may be concealed; or shall annoy or menace any company, or member of any company, whilst in the performance of patrol-duty, he or they may be indicted in the superior court for a misdemeanor, and upon conviction thereof, shall be fined by said court, in a sum not exceeding fifty dollars. And that this law shall be enforced only on application of the citizens of the different patrol-districts, as herein-before arranged.

15. SEC. VI. That the provisions of the act passed the 18th of November, 1765, regulating patrols in this State, and all other acts subsequent to that time, in relation to patrols, are continued in full force, except so far as they conflict with this act: *Provided*, that the provisions of this act shall not extend to the counties of Bulloch, Hall, Carroll, Dade, Rabun and Hart. And that all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Commissioner's Oath.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the Justices of the *Peace* in and for said County, *Thomas West, Hamblin Felder and John Smith*, who swear that they will faithfully discharge the duties of Patrol-Commissioners, in and for the *six hundred and nineteenth* District, Georgia Militia, in the County aforesaid, agreeably to law.

Sworn to and subscribed,  
before me, this *May 1*, 1859. }

*James Mack, J. P.*

THOMAS WEST.  
HAMBLIN FELDER.  
JOHN SMITH.

### *Patrol-Company Organized.*

STATE OF GEORGIA, }  
Houston County. } *Six hundred and nineteenth District, G. M.*

To *Samuel Felder, Captain; William West, Thomas Gurr, Marcus Kunze, Joel W. Mann, Charles Heywood, Drury M. Cox, Silas Rawls, James Turrentine and John Smith*, you are hereby appointed Patrol-Company in and for the *southern* division of said District; said *southern* division extends, in a direct line from the house of *James Small*, on the eastern line of said District, to the house of *Richard Roe*, on the western line of said District. You are, within said *southern* division, to perform Patrol-duty according to law. This *May 10*, 1859.

THOMAS WEST, }  
HAMBLIN FELDER, } *Patrol-*  
JOHN SMITH, } *Commissioners.*

*Notice to Patrol-Man.*

*Joel W. Mann*—You are hereby notified and required to be and appear at the house of *John Doe*, in the *southern* division of the *six hundred and nineteenth* District, G. M., by *seven o'clock* in the evening, of the *twelfth instant*, for the purpose of performing Patrol-duty. This *May 10, 1859.*

SAMUEL FELDER, *Captain.*

NOTE.—One day's notice is sufficient. The notice may be given verbally.

*Report of the Captain.*

STATE OF GEORGIA, } *To the Patrol-Commissioners in and for the six*  
*Houston County.* } *hundred and nineteenth District, G. M.*

*Joel W. Mann*, having been notified to appear and perform Patrol-duty, (in the *southern* division of said District, on the evening of the *twelfth instant*,) made default, and did not appear for the purpose of performing said duty, either in person or by substitute. This *May 15, 1859.*

SAMUEL FELDER, *Captain.*

*Action of Patrol-Commissioners on the Report of the Captain.*

STATE OF GEORGIA, } *Sitting of Patrol-Commissioners in and for the six*  
*Houston County.* } *hundred and nineteenth District, G. M.*

Present—*Thomas West, Hamblin Felder and John Smith.*

It appearing by the report of *Samuel Felder*, Captain of the Patrol-company in and for the *southern* division of said District, that *Joel W. Mann*, was legally notified to be and appear, on the evening of the *twelfth instant*, for the purpose of performing Patrol-duty, in said division, failed to attend, either in person or by substitute. And it appearing that said *Joel W. Mann* has been properly notified to appear *this day* before the Patrol-Commissioners for the purpose of answering for his default. And the answer of said *Joel W. Mann* being deemed insufficient and unsatisfactory, said *Joel W. Mann* is hereby fined in the sum of *five dollars*, for his default aforesaid. This *May 20, 1859.*

THOMAS WEST, }  
 HAMBLIN FELDER, } *Patrol.*  
 JOHN SMITH, } *Commissioners.*

NOTE.—When the Patrol-man has made default, the Captain should inform himself, (at the time of making his report,) when the Commissioners will sit for the purpose of inquiring into the default, and then notify the defaulter of the fact; the notice may be verbal.

*Fi. Fa. against Defaulter.*

STATE OF GEORGIA, } *To John Jacobs, Constable in and for the six hun-*  
*Houston County.* } *dred and nineteenth District, G. M.*

We command you, that of the goods and chattels, lands and tenements, of *Joel W. Mann*, in your District, you cause to be made the sum of *five dollars*; a fine imposed upon said *Joel W. Mann*, for default in not performing patrol-duty; whereof the said *Joel W. Mann* is convicted and liable. And said sum being collected, (together with the costs for this service,) you are required to have the same before the under-



signed, with this precept, at the *Court-House in said District*, on the *first day of June* next.

*Witness our hands and seals, this May 20, 1859.*

THOMAS WEST, [L. S.] }  
HAMBLIN FELDER, [L. S.] } *Patrol-*  
JOHN SMITH, [L. S.] } *Commissioners.*

AN ACT to exempt all persons over forty-five years of age from patrol-duty; and to shorten the time of service of patrol-companies from six to three months.—*Approved Feb. 16, 1856.*

Persons over 45 exempt. 16. SEC. I. *Be it enacted*, That from and after the passage of this act, all persons over the age of forty-five years, shall be exempt from patrol-duty.

Term of service three months. 17. SEC. II. That from and after the passage of this act, the time of service of patrol-companies in this State, shall be three instead of six months, as is now fixed by law.

SEC. III. [Repeals conflicting laws.]

AN ACT to amend the fifth section of an act for the establishing and regulating Patrol, &c., approved November the eighteenth, seventeen hundred and sixty-five.—*Approved Dec. 27, 1845.*

Visits of Patrol, how often to be made. 18. *Be it enacted*, That every patrol shall go to, and examine the several plantations in their divisions, at such time as the captain, shall in his discretion, see fit; one day or night in fifteen, at least.

## CHAPTER XXXIV.

### SLAVE AND FREE PERSON OF COLOR.

AN ACT to amend and continue the foregoing; [act of 1765; see Patrol.]—*Approved Dec. 24, 1768.*

In what cases slaves may carry fire-arms. 1. SEC. I. Immediately from and after the passing of this act, it shall not be lawful for any slave, [see 17 and 118,] unless in the presence of some white person, to carry and make use of fire-arms, or any offensive weapon whatsoever, unless such slave shall have a ticket or license in writing from his master, mistress or overseer, to hunt and kill game, cattle or mischievous birds or beasts of prey; and that such license be renewed once every week; or unless there be some white person of the age of sixteen years or upwards, in the company of such slave, when he is hunting or shooting; or that such slave be actually carrying his master's arms to or from his master's plantation, by a special ticket for that purpose; or unless such slave shall be found in the day-time, actually keeping off birds within the plantation to which such slave belongs, lodging the same gun at night, within the dwelling-house of his master, mistress or white overseer: *Provided always*, that no slave shall have liberty to carry any gun, cutlass, pistol or other offensive weapon, abroad at any time between Saturday evening after sun-set and Monday morning before sun-rise, notwithstanding a license or ticket for so doing.

Not on the Sabbath.

2. SEC. II. In case any or either of the patrols established, or to be es-

established within this Province, by virtue of the said act, [*act of 1765,*] on searching and examining any negro-house for offensive weapons, fire-arms and ammunition, shall find any such; or in case any person shall find any slave using or carrying fire-arms, or other offensive weapons, contrary to the intent and meaning of this act, such patrol or person or persons, may lawfully seize and take away such offensive weapon, fire-arms and ammunition; but before the property thereof shall be vested in the person or persons who shall seize the same, such person or persons, shall within three days next after such seizure, go before a justice of the peace and shall make oath of the manner of taking thereof; and if such justice of the peace, after such oath made, or upon due examination, shall be satisfied that the said fire-arms, offensive weapon or ammunition, shall have been seized according to the directions and agreeably to the true intent and meaning of this act, the said justice shall by certificate, under his hand and seal, declare them forfeited, and that the property is lawfully vested in the person or persons who seized the same: *Provided always*, that no such certificate shall be granted by any justice of the peace, until the owner or owners of such fire-arms, or other offensive weapon, so seized as aforesaid, or the overseer or overseers who shall or may have the charge of such slave or slaves from whom such fire-arms, or other offensive weapon, so taken or seized, shall be duly summoned to show cause why the same should not be condemned as forfeited, or in case of non-appearance, until three days after the service of such summons and oath made of the service thereof, before the said justice.—[*See 118.*]

Patrol may seize fire-arms in negro-houses. Any person may seize fire-arms etc., in the possession of slaves. Mode of proceeding to forfeit fire-arms, etc.

Owner of fire-arms, etc., seized must be notified before forfeiture.

AN ACT for ordering and governing Slaves within this Province; and for establishing a jurisdiction for the trial of offences committed by such slaves and other persons therein mentioned; and to prevent the inveigling and carrying away Slaves from their Masters, owners or employers.—*Approved May 10, 1770.*

*Whereas*, from the increasing number of slaves in this province, it is necessary, as well to make proper regulations for the future ordering and governing such slaves and to ascertain and prescribe the punishment of crimes by them committed, as to settle and limit, by positive laws, the extent of the power of the owners of such slaves over them, so that they may be kept in due subjection and obedience, and owners, or persons having the care and management of such slaves, may be restrained from exercising unnecessary rigor or wanton cruelty over them—

3. SEC. I. *Therefore be it enacted*, That all negroes, Indians, mulattoes or mustizoes, who now are, or hereafter shall be in this province, (free Indians, in amity with this government, and negroes, mulattoes or mustizoes, who now are or hereafter shall become free, excepted,) and all their issue and offspring, born or to be born, shall be and they are hereby declared to be and remain, forever hereafter, absolute slaves, and shall follow the condition of the mother; and shall be taken and deemed in law, to be chattels personal, in the hands of their respective owners or possessors, and their executors, administrators and assigns, to all intents and purposes whatsoever: *Provided always*, that if any person or persons whatsoever, on behalf of any negro, Indian, mulatto or mustizo, do apply to the chief justice, or justices of His Majesty's general court, by petition, either during the sitting of said court, or before the chief justice, or any of the justices of the same court, at any time in the vacation, the said chief justice, or any of the said justices, shall be and he and they, is and are hereby empowered, to admit any such person so applying, to be guardian for any negro, Indian, mulatto or mustizo, claiming his or her freedom; and such guardian shall be enabled, entitled and capable in law, to bring an action of trespass, in the nature of ravishment of ward, against any person or

Negroes, etc., slaves, and follow the condition of the mother; that is, if she be slave, they are slaves, etc.

Suing for their freedom, how to proceed.



persons who shall claim property in, or shall be in possession of any such negro, Indian, mulatto or mustizo, and the defendant or defendants, shall and may plead the general issue on such action brought, and the special matter may and shall be given in evidence, and upon general or special verdict found, judgment shall be given, according to the very right of the cause, without having any regard to any defect in the proceedings, either in form or substance; and if judgment shall be given for the plaintiff, a special entry shall be made, declaring that the ward of the plaintiff is free; and the jury shall assess damages which the plaintiff's ward hath sustained; and the court shall give judgment and award execution against the defendant for such damages, with full costs

Plea of the general issue allowed.

Judgment for the Plaintiff. Damages allowed.

Judgment for the Defendant.

Burden of proof on the Plaintiff. Presumption against the Plaintiff.

Defendant to give security not to abuse word of the Plaintiff, during the pendency of the suit.

Slave must have written ticket or pass; [for form of ticket, see Patrol.]

How slave without pass may be punished.

Persons unauthorized, giving slave pass, liable to a forfeiture of five pounds.

Refractory slave may be corrected.

4. SEC. II. In every action or suit to be brought by any such guardian as aforesaid, appointed pursuant to the directions of this act, the defendant shall enter into a recognizance, with one or more sufficient sureties, to the plaintiff, in such sum as the said general-court shall direct, with the condition that he shall produce the ward of the plaintiff, at all times when required by the court, unless such defendant shall prove upon oath, to the satisfaction of the said court, his inability to produce such ward; and that whilst such action or suit shall be depending and undetermined, the ward of the plaintiff shall not be abused or misused.

5. SEC. III. And for the better keeping slaves in due order and subjection, *Be it further enacted*, That no person whatsoever shall permit or suffer any slave under his or their care or management, and who lives or is employed in any town in this Province, to go out of the limits of the said town or towns; or any such slave who lives in the country, to go out of the plantation to which such slave belongs, or in which plantation such slave is usually employed, without a ticket, signed or subscribed by the master or other person having the care or charge of such slave, or by some other person, by his or their order, direction and consent.—[*See Patrol.*] And every slave which shall be found out of any town in this Province, if such slave lives or is usually employed there, or out of the plantation to which such slave belongs, or in which such slave is usually employed, if such slave lives in the country, without a ticket, as aforesaid, or without a white person in his or her company, shall be punished with whipping on the bare back, not exceeding twenty lashes.

6. SEC. IV. If any person or persons shall presume to give a ticket or license to any slave, who is the property or under the care or charge of another, without the consent of the owner or other person having the charge of such slave, he, she or they shall forfeit to the owner a sum not exceeding five pounds, over and above the damage that may accrue to such owner, by the absence of such slave.—[*See Cobb's Penal Code*, 183, number 289.]

7. SEC. V. If any slave who shall be out of the house or plantation where such slave doth live, or is usually employed, without some white person in company with such slave, shall refuse to submit to the examination of any white person, it shall be lawful for any such white person to pursue, apprehend and moderately correct such slave.

8. SEC. VII. *And whereas*, The frequent meeting and assembling of slaves, under the pretence of feasting, may be attended with dangerous



consequences, *Be it further enacted*, That it shall and may be lawful for every justice assigned to keep the peace in this Province, within his respective parish, upon his own knowledge, or information received, either to go in person, or by warrant or warrants directed to any constable or other person, to command to their assistance any number of persons as they shall see convenient, to disperse any assembly or meeting of slaves, which may disturb the peace or endanger the safety of his majesty's subjects. And every slave which shall be found and taken at any such meeting as aforesaid, shall and may, by order of such justice, immediately be corrected, without trial, by receiving on the bare back, not more than twenty-five stripes, with a whip, switch or cow-skin. And such justice, constable or person as aforesaid, are hereby authorized and empowered to search all suspected places for arms, ammunition or stolen goods, and to apprehend and secure all such slaves as they shall suspect to be guilty of any crimes or offences whatsoever, and to bring them to speedy trial, according to the direction hereafter given by this act.—[See 159.] And in case any constable or other person, shall refuse to obey or execute any of the warrants or precepts of such justices, or any of them, within their several parishes, or shall refuse to assist the said justice or constable, or any of them, when commanded and required, such person and persons shall forfeit and pay for every such offence, a sum not exceeding five pounds sterling, to be recovered by a warrant, under the hand and seal of any other justice of the peace.

Unlawful meetings of slaves how broken up. All persons must assist in the execution of this act.

Slave may be corrected on the spot.

Searches to be made for arms, etc.

Persons refusing to obey, how punished.

9. SEC. X. And for preventing the concealment of crimes and offences committed by slaves, and for the more effectual discovery and bringing slaves to condign punishment, *Be it further enacted*, That the evidence of any free Indians, mulattoes, mustizoes, or negroes, or slaves, shall be allowed and admitted in all cases whatsoever, for or against another slave accused of any crime or offence whatsoever; [see 59;] the weight of which evidence, being seriously considered and compared with all other circumstances attending the case, shall be left to the justices and jury.

Who competent witnesses on the trial of slaves.

10. SEC. XIV. And for the encouragement of slaves to make discovery of the designs of others to poison any person, *Be it enacted*, That every negro, mulatto or mustizo, who shall hereafter give information of the intention of any other slave to poison any person, or of any slave that hath furnished, procured or conveyed any poison, to be administered to any person, shall upon conviction of the offender or offenders, be entitled to and receive from the public of this Province, a reward of twenty shillings, to be paid him or her by the treasurer, yearly and every year, during the abode of such negro, mulatto or mustizo, in this Province, on the day that such discovery was made; and shall also, be exempted from the labor of his or her master on that day. And every justice before whom such information and conviction is made, is hereby required to give a certificate of every such information, which certificate shall entitle the informant to the reward aforesaid: *Provided always, nevertheless*, that no slave shall be convicted upon the bare information of any other slave, unless some circumstance or overt act appear, by which such information shall be corroborated to the satisfaction of the said justices and jury.

Slave giving information of the intention of other slave to poison, to be rewarded.

Justice to give certificate.

Information must be corroborated.

11. SEC. XV. In case any slaves shall be convicted of having given false information, whereby any other slave may have suffered wrongfully, every such false informer shall be liable to and suffer the same punishment as was inflicted upon the party accused. Any law, usage or custom to the contrary notwithstanding.

Slave giving false information how punished.

12. SEC. XVI. In case any slave shall teach and instruct another slave in the knowledge of any poisonous root, plant, herb or other sort of a poison

Slaves teaching others to



poison, how  
both to be  
punished.

whatever, he or she offending, shall upon conviction thereof, suffer death as a felon; and the slave or slaves so taught or instructed, shall suffer such punishment, not extending to life or limb, as shall be adjudged and determined by the justices and jury, before whom such slave or slaves shall be tried.—[See 56.]

Slave not to  
administer  
medicine of  
his own pre-  
paration.  
Offender how  
punished.

13. SEC. XVII. No negroes or other slaves shall hereafter be suffered or permitted to administer any medicine, or pretended medicine, to any other slave, but at the instance or direction of some white person, owning or having the care and management of the slave to whom the same is to be administered. And in case any negro or other slave shall offend herein, he or she, shall upon complaint and proof thereof made, to any justice of the peace, suffer corporal punishment, not exceeding fifty stripes.—[See 56.]

All persons  
summoned  
required to  
appear and  
give evidence  
on the trial of  
slaves.

14. SEC. XIX. The said justices, or any of them, are hereby authorized, empowered and required, to summon and compel all persons whatsoever, to appear and give evidence, upon the trial of any slave; and if any person shall neglect or refuse to appear, or appearing shall refuse to give evidence; or if any master or other person who has the care and government of any slave, shall prevent and hinder any slave under his charge and government from appearing and giving evidence in any matter depending before the justices and jury aforesaid, the said justices may, and they are hereby fully empowered and required, upon due proof made of such summons being served, to bind every such person offending as aforesaid, by recognizance, with one or more sufficient sureties, to appear at the next general-court, to answer such their offence and contempt; and for default of finding sureties, to commit such offenders to prison, for any term not exceeding the space of two month.

Master refus-  
ing to let his  
servant ap-  
pear, how  
punished.

Master con-  
cealing ac-  
cused slave,  
how punish'd.  
[This must be  
a legal accusa-  
tion; that is,  
by warrant,  
bill, etc.]

15. SEC. XX. In case the master or other person having charge or government of any slave who shall be accused of any capital crime, shall conceal or convey away any such slave, so that he cannot be brought to trial and condign punishment, every master or other person so offending, shall forfeit a sum not exceeding two hundred pounds sterling, if such slave be accused of a capital crime as aforesaid; but if such slave be accused of a crime not capital, then such master or other person shall only forfeit a sum not exceeding twenty pounds sterling, to be paid to the treasurer for the use of the public.

The duty of  
inflicting pun-  
ishment upon  
a slave, for  
capital offen-  
ces, is by law  
imposed upon  
the sheriff.

16. SEC. XXI. All and every, the constable and constables, in the several parishes within this Province, where any slave shall be sentenced to death or other punishment, shall cause execution to be done of all the orders, warrants, precepts and judgments of the justices hereby appointed to try such slaves, for the charges and trouble of which, the said constable or constables respectively, shall be paid by the public, unless in such cases as shall appear to the said justice or justices to be malicious or groundless prosecutions, in which cases, the said charges shall be paid by the prosecutors—for whipping or other corporal punishment, not extending to life, the sum of five shillings; and for any punishment extending to life, the sum of fifteen shillings; and such other charges for keeping and maintaining such slaves, as are by the act for erecting the work-house appointed. For the levying of which charges against the prosecutor, the justices are hereby empowered to issue their warrant. And that no delay may happen in causing execution to be done upon such offending slave or slaves, the constable who shall be directed to cause execution to be done, shall be and he is hereby empowered to press one or more slave or slaves in or near the place where such whipping or other corporal punishment shall be inflicted, to whip or inflict such other corporal punishment upon the

Fees of the  
constable.

*Fi. fa.* for  
costs may be  
issued.  
By-standing  
slaves may be  
required to in-  
flict punish-  
ment.



offender or offenders; and such slave or slaves so pressed, shall be obedient to and observe all the orders and directions of the constable, in and about the premises, upon pain of being punished by the said constable, by whipping on the bare back, not exceeding twenty lashes; which punishment the said constable is hereby authorized and empowered to inflict. And the constable shall, if he presses a negro, pay the owner of the said negro two shillings, out of his fee, for doing the said execution; and in cases capital, shall pay the negro doing the said execution, the sum of two shillings, over and above the said fee to his owner.

17. SEC. XXII. It shall not be lawful for any slave to carry and make use of fire-arms, [*and see 118,*] or any offensive weapon whatsoever, unless there be some white person of the age of sixteen years or upwards, in the company of such slave, when he is hunting or shooting; or unless such slave be found in the day-time, actually keeping off birds, or killing beasts of prey, within the plantation to which such slave belongs; lodging the same gun at night, within the dwelling-house of his master, mistress, or white overseer. And in case any person shall find any slave using or carrying fire-arms or other offensive weapon, contrary to the true intention of this act, such person may lawfully seize and take away such offensive weapon or fire-arms; but before the property thereof shall be vested in the person who shall seize the same, such person shall, within forty-eight hours next after such seizure, go before the next justice of the peace, and shall make oath of the manner of the taking thereof. And if such justice of the peace, after such oath shall be made, or if upon any other examination, he shall be satisfied that the said fire-arms or other offensive weapons, shall have been seized according to the directions and agreeably to the true intent and meaning of this act, the said justice shall, by certificate under his hand and seal, declare them forfeited, and that the property is lawfully vested in the person who seized the same: *Provided always*, that no such certificate shall be granted by any justice of the peace, until the owner or owners of such fire-arms or other offensive weapon so seized as aforesaid, or the overseer or overseers who shall or may have the charge of such slave or slaves from whom such fire-arms or other offensive weapon so taken or seized, shall be duly summoned to show cause why the same should not be condemned as forfeited, or until forty-eight hours after the service of such summons, and oath made of the service thereof, before the said justice.—[*See Patrol.*]

Slaves not to carry fire-arms but in certain excepted cases.

Fire-arms how forfeited.

Owner or overseer must first be notified.

18. SEC. XXIII. If any slave shall presume to strike any white person, such slave upon trial and conviction, before the justice or justices, according to the direction of this act, shall for the first offence, suffer such punishment as the said justice or justices shall in his or their discretion, think fit, not extending to life or limb; and for the second offence, suffer death. But, in case any such slave shall grievously wound, maim or bruise, any white person, though it shall be only the first offence, such slave shall suffer death, [*see 50 and 55.*] *Provided always*, that such striking, wounding, maiming or bruising, be not done by the command and in the defence of the person or property of the owner or other person having the care and government of such slave; in which case the slave shall be wholly excused, and the owner or other person having the care and government of such slave, shall be answerable as if the act had been committed by himself.—[*And see Cobb's Penal Code, 74 and 185.*]

Slave striking white person, how to be punished.

If done by command or in defence of master, etc. excusable.

19. SEC. XXIV. It shall and may be lawful for every person to take, apprehend and secure, any run-away or fugitive slave, and they are hereby directed and required, within forty-eight hours, [*see 162,*] after such taking, apprehending and securing, (otherwise such person to be construed

Fugitive slaves to be returned to owner, delivered to



constable or sent to jail. and taken as a harbinger of such run-away or fugitive slave,) to send such slave, if convenient, to the master or other person having the care and government of such slave, if the person taking up or securing such slave, knows or can without difficulty be informed to whom such slave belongs, or such slave shall be delivered into the custody of the master of the work-house of the parish, if any; but if none, to any constable of the said parish. And the master or other person who has the care or government of such slave, shall pay for taking up such slave, whether by a free person or slave, the sum of five shillings sterling; and the master of the work-house or constable, upon receipt of every fugitive or run-away slave, is hereby directed and required to keep such slave in safe custody, until such slave shall be lawfully discharged; and shall as soon as conveniently it may be, advertise such slave in the public gazette; and also, in the most public place in the parish where such slave shall be taken up, with the best description he shall be able to give, first carefully viewing and examining such slave, for any mark or brand, which he shall also advertise, to the intent the owner, or other person who shall have the care and charge of such slave, may come to the knowledge that such slave is in custody. And if such slave shall escape through negligence and cannot be taken up in three months, the said person shall answer to the owner for the value of such slave, or the damages which the owner shall sustain by reason of such escape, as the case shall happen.—[See 103.]

Reward to be paid to person taking up. If he escape through negligence, jailer answerable.

Slave must be advertised.

Jailer's duty to fugitive slave. 20. SEC. XXV. The said master of the work-house or constable, shall at the charge of the owner of such slave, provide sufficient food, drink, clothing and covering, for every slave delivered into his custody, or on failure thereof, shall forfeit all his fees, and for each day after he shall neglect to advertise, as before directed, the sum of three shillings.

Mileage allowed to taker-up of fugitive slave; and how collected. 21. SEC. XXVI. If any person shall take up any run-away slave, and shall deliver such slave either to the master or other person having the care and charge of such slave, or to the constable of the parish, or the master of the work-house, he shall be entitled to receive from the owner, or constable of the parish, or the master of the work-house, two pence per mile, for every mile such slave shall have been brought or sent, to be computed from the place where such slave was apprehended. And if such slave shall be delivered into the custody of the constable of the parish aforesaid, or the master of the work-house, the person delivering such slave, shall give an account of his name, place of abode, and the time and place, when and where, such slave was apprehended; which account the said constable or master of the work-house, shall enter down in a book to be kept for that purpose; and shall give a receipt for any such slave which shall be delivered as aforesaid, into his custody. And the said constable or master of the work-house, is hereby fully authorized and empowered to demand and receive from the owner or other person having the charge or care of any such slave, for negroes committed from the month of October to March inclusive, for finding necessary clothing and covering, (to be the property of the master,) any sum not exceeding eighteen shillings; and the several sums following and no other sum, fee or reward, on any pretence whatsoever, that is to say—that for apprehending each slave, paid to the person who delivered such slave into custody, five shillings; for mileage, paid to the same person, two pence per mile; for a sufficient quantity of provisions for each day, for each slave, sixpence; for advertising every slave as directed by this act, three shillings and sixpence; for receiving each slave, sixpence; for poundage on money advanced, one shilling in the pound; and the said constable or master of the work-house, shall and may lawfully detain any slave, in custody, until the fees and

To be demanded of the owner.

Allowance provided for and stipulated.

Slave may be detained, etc.



expenses aforesaid, be fully paid and satisfied. And in case the owner of such slave, or his overseer, agent, manager, attorney or trustee, shall neglect or refuse to pay or satisfy the said fees and expenses, for the space of thirty days, after the same shall be demanded by notice in writing, served on the owner of such slave, or if the owner is absent from this Province, upon his overseer, agent, manager, attorney or trustee, the said constable or master of the work-house, shall and may expose any such slave to sale, at public outcry, first giving ten days' notice of such sale; and after deducting the fees and expenses aforesaid, and the charges of such sale, the overplus-money arising from such sale, to be lodged in the hands of any one justice of the parish where such sale shall be made, and upon demand, to be by him returned to any person who has a right to demand and receive the same.—[See 105 and 158.]

Owner refusing to pay expenses, etc. slave may be sold.

22. SEC. XXVII. If any constable or the master of the work-house, shall refuse to take into his or their custody, any fugitive slave or slaves, and to do and perform all the several services and duties required by the foregoing clause, such constable or master of the work-house, shall forfeit a sum not exceeding twenty pounds sterling, one-half to be paid to the owner of such slave, and the other half to the poor of the parish. Such fine to be recovered on proof being made of such offence being committed.

Liability of constable and jailer, for refusing to receive fugitive slave.

23. SEC. XXIX. If any free person or any slave shall harbor, conceal or entertain any slave that shall run away, or shall be charged or accused of any criminal matter, every free negro, mulatto and mustizo, [see 55,] and every slave, that shall harbor, conceal or entertain any such slave, being duly convicted thereof, according to the directions of this act, if a slave, shall suffer such corporeal punishment, not extending to life or limb, as the justice or justices who shall try such slave, shall in his or their discretion, think fit. And if a free person, shall forfeit the sum of thirty shillings, for the first day and three shillings for every day such slave shall have been absent from his or her owner or employer, to be recovered and applied as in this act, hereafter, is directed. [As to white persons harboring slaves, see Cobb's Penal Code, 181. Free person of color, harboring, etc., see 124.]

Slave and free person of color, harboring, etc., slave, how punish'd.

24. SEC. XXX. If any person shall be maimed, wounded or disabled, in pursuing, apprehending or taking any slave that is fugitive, or charged with any criminal offence, or in doing any other act, matter or thing, in obedience to or in pursuance of the directions of this act, he shall receive such reward from the public as by the General-Assembly shall be thought fit and proper. And if any such person shall be killed, such reward shall be given and paid to his heirs, executors or administrators.

Persons getting injured in the execution of this act, to be rewarded by the public.

And whereas, several owners of slaves may permit them to keep canoes, and to breed and raise horses and neat-cattle, and to traffic and barter, in several parts of this Province, for the particular and peculiar benefit of such slaves, by which means they may have, not only an opportunity of receiving and concealing stolen goods, but to plot and confederate together, and form conspiracies, dangerous to the peace and safety of the whole Province—

25. SEC. XXXV. Be it therefore enacted, That it shall not be lawful for any slave so to buy, sell, trade, traffic, deal or barter, for any goods or commodities, (except as before excepted.) Nor shall any slave be permitted to keep any boat, perriagua or canoe, or to raise, breed or keep, for the use and benefit of such slave, any horses, mares and neat-cattle, under pain of forfeiting all the goods and commodities which shall be so bought, sold, trafficked, traded, dealt or bartered for by any slave, and of all the

How goods, etc., canoes, etc., belonging to slaves, may be seized and forfeited.



boats, perriaguas, canoes, horses or cattle, which any slave shall keep, raise or breed, for the particular use, benefit and profit of such slave. And it shall and may be lawful for any person or persons whatsoever, to seize and take away from any slave, all such goods, commodities, boats, perriaguas, canoes, horses, mares or neat-cattle, and to deliver the same to any justice of the peace nearest to the place where the seizure shall be made; and such justice shall take the oath of such person who shall make any such seizure, concerning the manner of seizing and taking the same; and if the said justice shall be satisfied that such seizure hath been made according to the directions of this act, he shall pronounce and declare the goods so seized, as aforesaid, to be forfeited, and shall order the same to be sold at public outcry, and the moneys arising from such sale shall be disposed of and applied as is herein-after directed: *Provided always*, that if any goods shall be seized, which come to the possession of any slave by theft, finding or otherwise, without the knowledge, privity, consent or connivance of the persons who have a right to the property, or lawful custody of any such goods, the same shall be restored, on such persons making oath before any justice, as aforesaid, who is hereby empowered to administer such oath, to the effect or in the following words—"I, A B, do sincerely swear, that I have a just and lawful right or title, to certain goods seized and taken by C D, out of the possession of a slave name E; that I did not, directly or indirectly, permit or suffer the said slave, or any other slave whatsoever, to keep and employ the said goods, for the use, benefit or profit, of any slave whatsoever; or to sell, barter or give away the same; but that the same goods were in possession of the said slave by theft, finding or otherwise, or to be kept, *bonâ fide*, for the use of E F, a free person, and not for the use or benefit of any slave whatsoever—so help me God." Which oath shall be taken as the case shall happen: *Provided also*, that it shall be lawful for any person, being the owner or having the care and government of any slave, who resides or is usually employed in any part of this Province, without the limits of any town, to give license or permission to sell, exchange or barter, in Savannah or elsewhere within this Province, the goods or commodities of the owner or other person having the care and government of such slave: *Provided*, that in such license or permission, the quantity and quality of the goods and commodities with which such slave shall be intrusted, be particularly and distinctly set down and specified, and signed by the owner or other person having the care or government of such slave, or by some other person, by his or their order and direction.

Stolen goods, etc., to be restored to the owner upon his making oath.

Form of the oath.

Slave may trade if he has written permission.

What the permit must contain.

*And*, as it is absolutely necessary to the safety of this Province, that all due care be taken to restrain the wandering and meeting of negroes and other slaves, at all times, and more especially on Saturday-nights, Sundays, and other holy-days, and their using and carrying mischievous and dangerous weapons, or using and keeping drums, horns, or other loud instruments, which may call together, or give sign or notice, to one-another, of their wicked designs and intentions—and that all masters, owners and others, may be enjoined, diligently and carefully, to prevent the same—

Slave may be taken up under certain circumstances, and whipped.

26. SEC. XXXVI. *Be it enacted*, That it shall be lawful for any person whomsoever, to apprehend and take up any negro or other slave, that shall be found out of the plantation of his or their master or owner, at any time, especially on Saturday-nights, Sundays or other holy-days, not being on lawful business, and with a ticket from their master, or not having a white person with them. And the said slave or slaves, met or found out of the plantation of his or their master or mistress, though



with a ticket, if he or they be armed with such offensive weapons aforesaid, him or them to disarm, take up and whip. And whatsoever master, or owner, or overseer, shall permit or suffer his or their slave or slaves, at any time hereafter, to beat drums, blow horns or other loud instruments, or whosoever shall suffer and countenance, any public meeting or feasting of strange slaves in their plantations, shall forfeit thirty shillings sterling for every such offence, upon conviction or proof as aforesaid: *Provided*, an information or other suit be commenced within one month after forfeiture thereof.

Slaves shall  
not beat  
drums, etc.

27. SEC. XXXVII. No slave or slaves shall be permitted to rent or hire any house, room, store or plantation, on his or her own account, or to be used or occupied by any slave or slaves. And any person or persons who shall let or hire any house, room, store or plantation, to any slave or slaves, or to any free person, to be occupied by any slave or slaves, every person so offending, shall forfeit and pay to the informer, a sum not exceeding twenty pounds.

May not hire  
house, etc.  
Person letting  
house, etc. to  
slave, how  
punished.

*And whereas*, it may be attended with ill consequences, to permit a great number of slaves to travel together on the high-roads, without some white person in company with them—

28. SEC. XXXVIII. *Be it therefore enacted*, That no men-slaves, exceeding seven in number, shall hereafter be permitted to travel together in any high-road in this Province, without some white person with them. And it shall and may be lawful for any person or persons who shall see any men-slaves, exceeding seven in number, without some white person with them, as aforesaid, travelling or assembled together in any high-road, to apprehend all and every such slaves and whip them, not exceeding twenty lashes, on the bare back.

Number of  
man slaves  
above seven,  
not to travel  
together with-  
out a white  
person in  
company.

*And whereas*, the having slaves taught to write, or suffering them to be employed in writing, may be attended with great inconvenience—

29. SEC. XXXIX. *Be it therefore enacted*, That all and every person and persons whatsoever, who shall hereafter teach, or cause any slave or slaves, to be taught to write or read writing, or shall use or employ any slave as a scribe, in any manner of writing whatsoever, every such person and persons, shall for every such offence, forfeit the sum of twenty pounds sterling.—[*See Cobb's Penal Code*, 183.]

Slaves not to  
be taught to  
write or read  
writing.

30. SEC. XLI. If any person shall on the Lord's-day, commonly called Sunday, employ any slave, in any work or labor, (work of absolute necessity, and the necessary occasions of the family, only excepted,) every person so offending, shall forfeit and pay the sum of ten shillings, for every slave he, she or they, shall so cause to work or labor.

Slaves must  
not be made  
to work on  
Sunday.

*And whereas*, plantations settled with slaves, without any white man thereon, may be harbors for run-away and fugitive slaves—

31. SEC. XLIV. And if the plaintiff be non-suit, or a verdict pass for the defendant; or if the plaintiff discontinue his action, or enter a *nolle-prosequi*; or if upon demurrer, judgment be given for the defendant, every such defendant shall have his full costs.

Upon non-  
suit, etc.,  
plaintiff to  
pay full costs.

32. SEC. XLV. This act, and all the clauses therein contained, shall be construed most largely and beneficially, for promoting and carrying into execution this act. And for the encouragement and justification of all persons to be employed in the execution thereof; and that no record, warrant, precept or commitment, to be made by virtue of this act, or the proceedings thereupon, shall be reversed, avoided or anywise impeached, by reason of any default in form.

How this act  
is to be con-  
strued.



*Written Permission to sell certain Articles, &c.*

GEORGIA. } The bearer *Peter*, has permission to sell, on his own  
 Houston County. } account and for his own use, *one dozen Chickens, four*  
*dozen Eggs, and two bushels Rice.* And invest the proceeds for *Sugar,*  
*Coffee and Tobacco.* This *May 1, 1859.*

JOHN JONES, *Overseer.*

AN ACT to protect Religious Societies in the exercise of their religious duties.  
 —*Approved Dec. 13, 1792.*

33. SEC. I. [This section provides for the punishment of persons who may disturb congregations of white persons assembled for Religious Worship.—*See title "Religious Worship."*]

Negroes not to congreg- 34. SEC. II. And no congregation or company of negroes, shall under any  
 gate, etc. pretence of Divine worship, assemble themselves, contrary to the act for regulat-  
 ing patrols.

## ACT OF 19TH DECEMBER, 1793.

State not lia- 35. SEC. III. From and after the passing of this act, the State shall in no  
 ble for slaves instance be answerable for, or liable to pay the owner, any consideration what-  
 executed. ever, for any negro slave or slaves, who may suffer death by the laws of this  
 State.

Costs of pros- 36. SEC. IV. All expenses and fees, chargeable by any of the public  
 ecution and officers, for prosecuting any negro slave or slaves, (convicted of any crime not  
 punishment capital, against the laws of this State,) shall be paid by the owner or owners  
 of slaves, how of such slave or slaves. But, in all cases where any slave shall be convicted  
 paid. of any crime, whereby he, she or they may suffer death, the expenses attend-  
 ing the trial and execution of such slave or slaves, shall be paid by the county  
 where they shall be executed.

AN ACT to carry into effect the 12th section of the 4th article of the Constitu-  
 tion.—*Approved Dec. 2, 1799.*

The same 37. SEC. II. If any person or persons whomsoever, shall maliciously deprive  
 mode of pro- a slave or slaves of life, [*see the Constitution, fourth article, twelfth section,*]  
 ceeding and he, she or they so offending, shall be prosecuted by indictment in the superior  
 degree of pun- court of the county in which such offence may have been committed, in like  
 ishment shall be inflicted manner as if the person or persons charged, had perpetrated a like offence  
 for murder of on any free white person or persons whomsoever. And on all such trials, the  
 a slave, or for same rules of law and evidence shall obtain as on other trials for murder.  
 manslaughter, And if upon trial for such offence, any person or persons shall be found guilty  
 as for killing of murder, he, she or they shall suffer such punishment as would be inflicted,  
 a white per- in case the like offence had been committed on a free white person; that is to  
 son. say, shall be hanged, without the benefit of clergy. And if found guilty of  
 manslaughter, shall be punished by branding, [*see Cobb's Penal Code, 81,*  
*number 30. And 82; numbers 33, 34 and 35,*] in like manner as is usual  
 in cases where any person or persons is or are convicted of manslaughter com-  
 mitted on a free white person or persons, except in case of insurrection by  
 such slave; and unless such death should happen by accident, in giving such  
 slave moderate correction.

How the of- 38. SEC. III. In all prosecutions for offences of this nature, committed by  
 fence is to be any white person or persons, upon any slave or slaves, it shall be the duty of  
 charged in the the solicitor or attorney-general, preferring and prosecuting such indictment  
 indictment. or indictments, to charge the offence or offences, to be contrary to the consti-  
 tution and act of the General-Assembly of this State, in such case made and

provided. And the judge or judges presiding on the trial or trials of such offender or offenders, shall be bound, upon conviction by a jury, to pronounce sentence in like manner as if the like offence had been committed on a free white person; so that such offender or offenders may be punished according to the true intent and meaning of the twelfth section of the fourth article of the constitution, and of this law.

Duty of the  
presiding  
judge.

AN ACT to prescribe the mode of manumitting slaves in this State.—*Approved Dec. 5, 1801.*

39. SEC. I. From and after the passing of this act, it shall not be lawful for any person or persons to manumit or set free any negro slave or slaves; (any mulatto, mustizo or any other person or persons of color, who may be deemed slaves at the time of the passing of this act,) in any other manner or form, than by an application to the legislature for that purpose.—[*See 70.*]

Slaves cannot  
be manumit-  
ted only by  
the Legisla-  
ture.

40. SEC. II. If any person or persons shall after the passing of this act, set free any slave or slaves, in any other manner or form than the one prescribed herein, he shall forfeit for every such offence \$200; to be recovered by action of debt, or indictment; the one-half of the said sum to be applied to the use of the county in which the offence may have been committed, the other half to the use of the informer or informers. And the said slave or slaves so manumitted and set free, contrary to the true meaning and intent of this act, shall be still, to all intents and purposes, as much in a state of slavery as before they were manumitted and set free by the party or parties offending.—[*See 70.*]

Penalty for at-  
tempting to  
manumit  
slave.

Slave still in  
slavery.

41. SEC. III. It shall not be lawful for the clerks of the superior courts, or any other officer of the State, to enter on record, in any book of record by them kept, any deed of manumission, or other paper, which shall have for object, the manumitting and setting free, any slave or slaves; and the party offending herein, shall forfeit, for every deed or other paper so recorded, the sum of \$100, to be recovered by action of debt, or indictment in any court having cognizance thereof; the one-half to be paid to the party who shall sue or prosecute for the same, and the other half to the use of the county where the offender may reside.—[*See 70.*]

Deeds of man-  
umission, etc.,  
not to be re-  
corded.

AN ACT to amend the act of 1770.—*Approved December 10, 1803.*

42. SEC. II. If the owner or owners of any slave shall permit such slave, for a consideration or otherwise, to have, hold and enjoy the privilege of laboring, or otherwise transacting business for him, her or themselves, except on their own premises, such owner or owners shall for every such weekly offence, forfeit and pay the sum of \$30, [*and by the tax-act of 1850, pay \$100,*] except in the cities of Savannah and Augusta, and the town of Sunbury.

Slaves not to  
labor for  
themselves  
but in certain  
excepted  
cases.

43. SEC. III. The several fines and penalties imposed in pursuance of this act, or the before-recited act, shall in no one instance, exceed the sum of \$30 and shall be recovered before a justice of the peace, in the usual form of liquidated demands; a moiety thereof shall be applied to the use and benefit of such person or persons as shall sue for and recover the same, and the other moiety thereof, shall within thirty days thereafter be transmitted by the justice of the peace before whom the same shall be recovered, to the clerk of the inferior court of the county where he resides, in support of the funds thereof.

Fines not to  
exceed \$30;  
how recov-  
ered.

44. SEC. IV. Nothing herein contained shall go to compel any slave to be put on his trial twice for one and the same offence.

Slave not to  
be tried twice.

#### ACT OF DECEMBER, 1808.

*Whereas*, the permitting of free negroes and persons of color to rove about the country in idleness and dissipation, has a dangerous tendency—



Certain free persons of color may be bound out.

45. SEC. I. *Be it enacted*, That the justices of the peace, with any three freeholders of the district, be and they are hereby vested with power to bind out to service, any male free negroes or persons of color, over the age of eight years, until he arrives to the age of twenty-one years, to artisans or farmers: *Provided*, such free person or persons of color have no guardian.—[*But see 177.*]

How they are to be provided for.

46. SEC. II. The respective masters to whom such servants may be indented, shall find them sufficient clothing to protect him or them, from the inclemency of the weather, and sufficient boarding and lodging.

Ill usage how remedied.

47. SEC. III. Where a complaint is made to the justices of the district where such indented servants may reside, of any ill usage by his said master, then and in that case, an investigation shall be had before the said justices; and on sufficient evidence being adduced, the said bounden servant shall be released from such master, and placed again to service, to another person of the same trade or farming.

NOTE.—The proceeding under the foregoing statute is so much like the case of a white apprentice, that it is sufficient to refer the reader to the title "Guardian and Ward."

#### ACT OF 15TH DECEMBER, 1810.

How guardian of persons of color may be appointed.

48. SEC. VII. The judge of the superior or the justices of the inferior courts, of the respective counties of this State, shall upon the written application of any free negro or person of color, made at any regular term of the said courts, praying that a white person, (resident of the county in which such application may be made, and in which such free person of color shall reside,) may be appointed his or her guardian, and upon the consent, in writing, of such guardian, appoint such white person, the guardian of such free person of color. And the said guardian of such free negro or person of color, shall be and he is hereby vested with all the powers and authority of guardians for the management of the persons and estates of infants. And all suits necessary to be brought for or against such free person of color, shall be in the name of such guardian, in his capacity of guardian: *Provided nevertheless*, that the property of such guardian shall, in no case, be liable for the acts or debts of his ward.

Guardian not liable for debts of ward. Guardian may be required to give security; his compensation.

49. SEC. VIII. The said judges of the superior or justices of the inferior courts, shall at their discretion, require security from such guardian as may be appointed, for the proper management of the affairs of his ward. And such guardian shall be allowed the same compensation for the discharge of his duties as guardian, as is allowed the guardians of infants, by the laws of this State.

#### *Petition by Free Person of Color for a Guardian.*

STATE OF GEORGIA, }  
Houston County. }

*To the Inferior Court of said County.*

The Petition of *Moses Myers*, (a free person of color,) of said County, sheweth, that he has no Guardian; wherefore, Petitioner prays that *John Doe*, of said County, may be appointed his Guardian. This *May 1*, 1859.

JAMES A. PRINGLE, *Pet'r's Att'y.*

I consent to the above Petition. This *May 1*, 1859.

JOHN DOE.

NOTE.—The Court may, if it thinks proper, require the Guardian to give Bond and Security for the faithful performance of his duties.—For further proceedings, see title "Guardian and Ward."

AN ACT to establish a tribunal for the trial of Slaves within this State.—

[*The act of Nov. 23, 1815, subjects free persons of color to the provisions of this act.*]—*Approved Dec. 16, 1811.*

50. SEC. I. From and immediately after the passing of this act, upon complaint being made to, or information received, upon oath, by any justice of the peace, of any crime having been committed by any slave or slaves, within the county where such justice is empowered to act, such justice shall by warrant, from under his hand, cause such slave or slaves to be brought before him, and give notice thereof, in writing, to any two or more of the nearest justices of the peace of the county, to associate with him, on a particular day, in said notice to be specified, not exceeding three days from the date of said notice, for the trial of such slave or slaves. And the justices so assembled, shall forthwith proceed to the examination of a witness or witnesses, and other evidence; and in case the offender or offenders shall be convicted of any crime not capital, the said justices, or a majority of them, shall give judgment for the inflicting any corporal punishment, not extending to the taking away life or member, as in their discretion may seem reasonable and just, and shall award and cause execution to be done accordingly. And in case it should appear to them, after investigation, that the crime or crimes wherewith such slave or slaves stand or stands charged, is a crime or crimes for which he, she or they ought to suffer death, such slave or slaves shall immediately be committed to the public jail of said county, if any, provided it should be sufficient, or to the custody of the sheriff of said county, or to the nearest sufficient jail thereto.

Proceedings against slave before justices of the peace.

Punishment in cases not capital.

Capital cases.

Must be committed.

51. SEC. VII. It shall be the duty of the clerk to make a record of the proceedings against such slave or slaves, separate and distinct from other records of his office; and he shall also issue *subpoenas* and other writs necessary to procure the attendance of a witness or witnesses, at the instance of either party. And that in all cases respecting the admission of evidence against people of color, the rules shall be the same as heretofore practised in this State.

Clerk must record proceedings. [The duties here prescribed must now be performed by the Clerk of the Superior Court.]

AN ACT to point out the mode of trial of offences committed by Free Persons of Color.—*Approved Nov. 23, 1815.*

52. An act passed at Milledgeville, on the 16th day of December, 1811, entitled “an act to establish a tribunal for the trial of slaves, within this State. The court therein established is hereby made a tribunal for offences committed by free persons of color, to all intents and purposes, as if the words free persons of color, had been inserted in the caption and every section of the said act, to establish a tribunal for the trial of slaves, within this State.

Act of 1811 applied to Free Persons of Color as well as slaves.

### *Affidavit to obtain a Warrant against a Slave, or Free Person of Color.*

STATE OF GEORGIA, } In person appeared before the undersigned,  
Houston County. } (one of the Justices of the Peace, in and for said County) *John Doe*, who being sworn, saith, that *Jacob*, of said County, a slave, (the property of *Richard Roe*,) on the *thirtieth* day of *April*, last past, in said County, of malice aforethought, then and there, committed the crime of *Murder*, by *stabbing with a knife*, *John*, a slave (the property of said *John Doe*,) without cause or provocation, and not in



his own defence; so that the said *slave John*, within *one hour* after the said *stabbing*, then and there died, by reason thereof.

Sworn to and subscribed,  
before me, this *May 1*, 1859.  
*James Mack, J. P.*

JOHN DOE.

### *Warrant founded on the above Affidavit.*

STATE OF GEORGIA, } To *John Jacobs*, one of the Constables in and for  
Houston County. } said County, and to all lawful officers.

Whereas, I have received information, by the oath of *John Doe*, that a *slave* named *Jacob*, of said County, (the property of *Richard Roe*,) on the *thirtieth* day of *April*, last past, in the said County, committed the crime of *Murder* upon the body of a *slave* named *John*, (the property of said *John Doe*.) You are, therefore, hereby authorized and commanded to arrest the said *slave Jacob*, and bring him before me, on the morning of the second instant at *Perry*, in said County, by ten o'clock, in order that said *slave Jacob*, may be dealt with as the law directs. Fail not.

Witness my hand and seal, this *May 1*, 1859.

JAMES MACK, J. P. [L. S.]

NOTE.—The affidavit made in order to procure the issuing of the warrant, is not regularly a part of the warrant; but it is safest, in every instance, that it should accompany the warrant, so that all the officers who may be required to act under the warrant may see the sufficiency of the grounds upon which it issued.

### *Notice to Associate Justices of the Peace.*

STATE OF GEORGIA, } To *William Masters, Esq.*, one of the Justices of  
Houston County. } the Peace, in and for said County.

Whereas, I have issued a Warrant for the apprehension of a *slave* named *Jacob*, who has been charged before me with having committed the crime of *Murder*. You are hereby notified and requested, to be in the town of *Perry*, on to-morrow morning, by ten o'clock, to associate on the examination of said *slave Jacob*, charged as aforesaid.

Witness my hand and official signature, this *May 1*, 1859.

JAMES MACK, J. P.

### *Return of the Constable on the Warrant.*

I have, this day, executed this precept by arresting the *slave Jacob*, and now have him before *James Mack, Esq.*, and the Associate Justices. This *May 2*, 1859.

JOHN JACOBS, Constable.

### *Subpœna for Witness.*

STATE OF GEORGIA, } To *Richard Roe*, of said County.  
Houston County. }

Whereas, I have received information, that on the *thirtieth* day of *April*, last past, a *slave* named *Jacob*, (your property,) in said County, committed the crime of *Murder*. And whereas, one of your servants named *Brutus*, was present at the time of committing said

*Murder.* You are, therefore, hereby required to produce before me, at *Perry*, in said County, *on to-morrow morning, by ten o'clock*, the said *slave Brutus*, in order that he may be examined, on the part of the State, touching the crime whereof the said *slave Jacob* is accused.

*Witness my hand and official signature, this May 1, 1859.*

JAMES MACK, J. P.

NOTE.—The Justices being assembled, and the accused *slave* [*or free person of color,*] being brought before them, their proceedings, as to the examination of the party accused, the witnesses, the evidence and the certificate, are to be the same as in the case of a white person; for which proceeding, see title “Justice of the Peace’s Criminal Jurisdiction.”

*Judgment rendered by the Justices.*

THE STATE } Upon the examination of the witnesses produced in  
vs. }  
JACOB, a Slave. } this case, and from all the evidence and circumstances  
connected therewith, the undersigned are of opinion, that said *slave Jacob, is not guilty of a capital crime. That said slave was present when the said slave John was stabbed, but said slave Jacob, did not stab said slave John, nor take part in said transaction. It further appears that said slave Jacob, did not endeavor to prevent the stabbing of said slave John, but stood passively by, when by his endeavors he might have prevented said stabbing; it is, therefore, ordered and adjudged, that John Jacobs, Constable, inflict, on the bare back of the said slave Jacob, with a cow-skin, the number of twenty-five lashes; after which said slave Jacob, (the cost being paid by his owner,) is to be discharged and set at liberty.*

*Witness our hands and official signatures, this May 2, 1859.*

JAMES MACK, J. P.

WILLIAM MASTERS, J. P.

JAMES WEST, J. P.

*Warrant of Commitment.*

STATE OF GEORGIA, } *To John Jacobs, Constable, and to the Keeper of the*  
Houston County. } *Jail of said County.*

Whereas, a *slave named Jacob*, has been arrested and brought before the undersigned, Justices of the *Peace* in and for said County, charged with the crime of *Murder*, committed in said County, on the *first* day of *May*, eighteen hundred and *fifty-nine*. And whereas, upon the investigation of said charge and the evidence adduced in support thereof, and all the circumstances connected with said charge, the undersigned are of opinion that said *slave Jacob*, is probably guilty of said crime charged upon him: therefore, you the said Constable are hereby commanded and required to convey the said *slave Jacob*, safely and securely, to the said Keeper of said Jail. And you, the Keeper of said Jail, are hereby commanded to receive said *slave Jacob* into your custody in said Jail, and him there keep, until he shall be thence delivered by due course of law.

*Witness our hands and seals, this May 2, 1859.*

JAMES MACK, J. P. [L. S.]

WILLIAM MASTERS, J. P. [L. S.]

JAMES WEST, J. P. [L. S.]



AN ACT to compel owners of old or infirm Slaves to maintain them.—*Approved Dec. 12, 1815.*

Inferior Court must relieve destitute slaves. 53. SEC. I. From and after the passing of this act, it shall be the duty of the inferior courts of the several counties in this State, on receiving information, on oath, of any infirm slave or slaves being in a suffering situation, from the neglect of the owner or owners of such slave or slaves, to make particular inquiries into the situation of such slave or slaves, and render such relief as they, in their discretion, may think proper.

And may recover the amount of the owner. 54. SEC. II. The said courts may, and they are hereby authorized, to sue for and recover from the owner or owners of such slave or slaves, the amount that may be appropriated for the relief of such slave or slaves, in any court having jurisdiction of the same. Any law, usage or custom, to the contrary notwithstanding.

NOTE.—The Compiler has never known of but one case that came within the purview of the above statute; that was the case of a master who ran away for debt, leaving an old woman, who was provided for by the Court, comfortably until she died. There are old and infirm, and consequently useless slaves, on every plantation, but no master ever entertains the idea of casting them off; they are provided for, with the same care a master provides for his useful servants.

AN ACT for the trial and punishment of Slaves and Free People of Color.—*Approved Dec. 19, 1816.*

What crimes considered capital. 55. SEC. I. The following shall be considered as capital offences, when committed by a slave or free person of color—insurrection, or any attempt to excite it; poisoning, or attempting to poison; committing a rape, or attempting it, on a free white female; assaulting a free white person, with intent to murder, or with a weapon likely to produce death; maiming a free white person; burglary, or arson of any description, as contained in the Penal Code of this State; murder of another slave, or free person of color—every and each of these offences, shall upon conviction, be punished with death; [*but see 83.*] And if Free person of color inveigling slave, how punished. any free person of color commits the offence of inveigling or enticing away, any slave or slaves, for the purpose of, and with the intention to aid and assist such slave or slaves, leaving the service of his or their owner or owners; or in going to another State, such person so offending, shall for each and every such offence, on conviction, be confined in the penitentiary at hard labor, for one year, and at the expiration of their imprisonment, shall be sold to the highest bidder, as a slave, for and during the term of their natural lives.—[*But see 87.*]

Other offences punishable at the discretion of the Court. 56. SEC. II. All other offences committed by a slave, or free person of color, either against persons or property, or against another slave or person of color, shall be punished at the discretion of the court, before whom such slave or person of color, shall be tried; such court having in view the principles of humanity, in passing sentence; and in no case shall the same extend to life or limb.

Governor may pardon in capital cases. 57. SEC. III. In every case of conviction for a capital felony, the owner of the slave, or guardian of the free person of color convicted, may apply to the court before which the conviction shall have taken place, and obtain a suspension of the execution of the sentence, for the purpose of applying to the governor for a pardon; and it shall be in the power of the governor to grant said pardon.—[Remainder of this section repealed—*see 61.*]

Governor may pardon in other cases. 58. SEC. IV. On a conviction for any other offence, not punishable with death, the court may, at its discretion, grant a suspension of the execution of the sentence, for the purpose of enabling the owner of a slave, or guardian of a free person of color, to apply to the governor, for a pardon, or commutation of the punishment, in such manner and upon such terms and conditions, as he may think proper to direct.—[*See 61.*]

Who may be witnesses. 59. SEC. V. On the trial of a slave, or free person of color, any witness



shall be sworn, who believes in God, and a future state of rewards and punishments.

60. SEC. VI. Every slave or free person of color, charged with any offence contained in this act, shall be arrested and tried, pursuant to an act entitled "an act to establish a tribunal for the trial of slaves within this State," passed the 16th day of December, 1811; and the 7th, 8th and 9th sections of this act; and shall receive sentence agreeably to the requisitions contained in this act.

Arrests and trials to be according to the act of 1811.

AN ACT to amend the foregoing.—*Approved Dec. 19, 1817.*

61. SEC. I. So much of the third section of the above-recited act as authorizes the governor to commute the punishment of death for that of imprisonment in the penitentiary, be and the same is hereby repealed.

Governor may not commute punishment.

62. SEC. II. In all cases where the jury, on the trial of any slave, or free person of color, shall return a verdict of guilty, the court shall pass the sentence of death on such slave, or free person of color, agreeably to the requisitions and subject to the same restrictions, as are required by the before-recited act; or proceed to inflict such other punishment as in their judgment will be most proportionate to the offence and best promote the object of the law, and operate as a preventive for like offences in future.

Sentence and punishment, how inflicted.

AN ACT for disposing of any such negro, mulatto, or person of color, who has been or may hereafter be imported or brought into this State, in violation of an act of the United States, entitled "an act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, 1808.—*Approved Dec. 19, 1817.*

63. SEC. I. It shall be lawful for his excellency the governor, and he is hereby authorized, to appoint some fit and proper person to proceed to all such ports and places within this State, as have, or may have, or may hereafter, hold any negroes, mulattoes or persons of color, as may have been, or hereafter, may be seized or condemned under the above-recited act of Congress, and who may be subject to the control of this State. And the person so appointed, shall have full power and authority, to ask, demand and recover, and receive, all such negroes, mulattoes or persons of color, and to convey the same to Milledgeville, and place them under the immediate control of the executive of this State.

The Governor may take possession of Africans illegally imported,

64. SEC. II. His excellency the governor is hereby empowered, to cause the said negroes, mulattoes or persons of color, to be sold, after giving sixty days' notice in a public gazette, in such manner as he may think best calculated for the interest of the State.

And have them sold, or

65. SEC. III. If previous to any sale of any such persons of color, the society for the colonization of free persons of color, within the United States, will undertake to transport them to Africa, or any other foreign place, which they may procure as a colony for free persons of color, at the sole expense of said society; and shall, likewise, pay to his excellency the governor, all expenses incurred by the State, since they have been captured and condemned, his excellency the governor is authorized and requested, to aid in promoting the benevolent views of said society, in such manner as he may deem expedient.

They may be turned over to the Colonization Society, upon certain terms.

AN ACT to alter and amend [*former act superseded*] "an act to prohibit slaves from selling certain commodities therein mentioned."—*Approved Dec. 19, 1818.*

66. SEC. V. If any slave or slaves, or free persons of color, shall purchase or buy any of the aforesaid commodities, from any slave or slaves, he, she or they, on conviction thereof, (before any justice of the peace,

Slave or free person of color, not to trade with



slaves for cer- contrary to the true intent and meaning of this act,) shall receive, on his,  
tain articles.— her or their bare back or backs, thirty-nine lashes ; to be well laid on,  
[See Cobb's by any constable of said county, or other person appointed by the justice  
Penal Code, of the peace, for that purpose : *Provided*, that nothing herein contained,  
182. number shall prevent any slave or slaves, from selling poultry at any time, with-  
285.] out a ticket, in the counties of Liberty, McIntosh, Camden, Glynn and  
Wayne.—[See 88.]

AN ACT supplementary to, and more effectually to enforce an act, en-  
titled “an act to prescribe the mode of manumitting slaves in this  
State,” passed December 5, 1801.—*Approved Dec. 19, 1818.*

*Whereas*, the principles of sound policy, considered in reference to the  
free citizens of this State, and the exercise of humanity towards the  
slave population within the same, imperiously require that the number  
of free persons of color within this State, should not be increased by  
manumission, or by the admission of such persons from other States, to  
reside therein. *And whereas*, divers persons of color, who are slaves by  
the laws of this State, having never been manumitted in conformity to  
the same, are nevertheless, in the full exercise and enjoyment of all the  
rights and privileges of free persons of color, without being subject to  
the duties and obligations, incident to such persons ; thereby constituting  
a class of people, equally dangerous to the safety of the free citizens of  
this State and destructive of the comfort and happiness of the slave  
population thereof ; which it is the duty of this legislature, by all just  
and lawful means, to suppress—

Act of 1801 to be enforced. 67. SEC. I. *Be it therefore enacted*, That the act, herein-before referred  
Penalties increased. to, shall be strictly enforced, but the penalties therein prescribed, except  
where the same shall be otherwise provided for by this act, shall be in-  
creased to five hundred dollars, for each and every offence inhibited by  
the said act ; and shall, together with such penalties as are prescribed  
by this act, and the proceeds of all sales directed hereby, after deduct-  
Proceeds how appropriated. ing costs, be appropriated, one-half to the use of the person suing or  
prosecuting for the same, and the other half to the use of the county in  
which the offence is committed ; except in the city of Savannah, where  
the half of such penalties, hereby appropriated to the use of the county,  
shall be appropriated and paid over to the use of that corporation.

How the act of 1801 is to be construed. 68. SEC. II. The third section of the said act, herein-before referred to,  
shall be construed to extend to inhibit the recording, only of so much of any  
instrument, (as is therein described,) as shall relate to the manumitting or  
setting free, of any slave or slaves.

Free Persons of color not to come into this State, under certain penalties. 69. SEC. III. From and after the passing of this act, it shall not be lawful  
for any free person of color, (Indians in amity with the State, and regularly  
articled seamen, or apprentices, arriving in any ship or vessel excepted) to come  
into this State ; and each and every person or persons offending herein, shall be  
liable to be arrested by warrant, under the hand and seal of any magistrate  
in this State ; and being thereof convicted, in the manner herein-after pointed  
out, shall be liable to a penalty not exceeding one hundred dollars ; and upon  
failure to pay the same, within the time prescribed in the sentence awarded  
against such person or persons, he, she or they shall be liable to be sold by  
public outcry, as a slave or slaves, in such manner as may be prescribed by  
the court awarding such sentence, [*but see 87 ;*] and the proceeds of such  
sales shall be appropriated in the manner provided for in the appropriation of  
penalties recovered under this act : *Provided*, that any person or persons  
who shall have been convicted under this section, and shall have complied  
with the sentence awarded against him, her or them, by payment of the pen-  
Prosecution may be repeated every twenty days.



alty or penalties, shall be liable to a new prosecution, and to all the pains and penalties herein prescribed, as often as he, she or they, shall be found within the limits of this State, after the expiration of twenty days from the time of his, her or their discharge from such previous prosecution: *And provided moreover*, that any artied seaman or apprentice, as aforesaid, who may be found within the limits of this State, after the expiration of twenty days from the departure of the ship or vessel in which he may have arrived, or after his discharge from such ship or vessel, shall be liable to all the pains and penalties of this act.

Seamen remaining after the sailing of their ship, etc. may be prosecuted.

70. SEC. IV. All and every will and testament, deed, (whether by way of trust or otherwise,) contract, agreement, stipulation, or other instrument in writing, or by parol, made and executed for the purpose of effecting or endeavoring to effect, the manumission of any slave or slaves, either directly, by conferring or attempting to confer freedom on such slave or slaves, indirectly or virtually, by allowing and securing, or attempting to allow and secure to such slave or slaves, the right or privilege of working for his, her or themselves, free from the control of the master or owner of such slave or slaves, or of enjoying the profits of his, her or their labor or skill, shall be and the same are hereby, declared to be utterly null and void. And the person or persons so making or executing any such deed, contract, agreement, stipulation, or other instrument in writing, or by parol, and all and every person or persons concerned in giving or attempting to give effect thereto, whether by accepting the trust thereby created or attempted to be created, or in any other way or manner whatsoever, shall be severally liable to a penalty not exceeding one thousand dollars; to be recovered in the manner herein-after pointed out. And each and every slave or slaves, in whose behalf such will or testament, deed, contract, agreement or stipulation, or other instrument in writing, or by parol, shall have been made, shall be liable to be arrested by warrant, under the hand and seal of any magistrate of this State, and being thereof convicted, in the manner herein prescribed, shall be liable to be sold as a slave or slaves, by public outcry; and the proceeds of such sales shall be appropriated in the manner prescribed by the first section of this act.—[See 87.]

Wills and contracts of all kinds for the manumission of slaves null and void.

Liability of persons making such instruments.

Slave attempted to be thus set free, shall be sold; how proceeds of the sale are to be appropriated.

71. SEC. V. All and every free person or persons of color, residing or being within this State, at the time of the passing of this act, and continuing or being therein on the first day of March next, except as herein-before excepted, shall on or before that day, and annually, on or before the first Monday in March, [see 79,] in each and every succeeding year, which [while] they shall continue within the limits of this State, make application to the clerk of the inferior court of the county in which they reside, [see 173,] and it shall be the duty of said clerk to make a registry of such free person and persons of color, in a book by him to be kept for that purpose, particularly describing therein the names, ages, places of nativity and residence, time of coming into this State, and occupation or pursuit of such free person or persons of color. And such clerk shall be entitled to demand and receive fifty cents for each and every person or persons, so registered, as aforesaid, and for granting a certificate thereof, which he shall, in like manner, be bound to do, on or before the first Monday in May thereafter, if no person shall appear to gainsay the same. And to the intent that all persons concerned or interested therein, may have due notice thereof, it shall be the duty of such clerk, forthwith, after the said first Monday in March, in each and every year, to cause to be published in one or more of the public gazettes of the county, or in counties where there are no gazettes, in some one or more of the gazettes of the State, a list of such free persons of color applying for registry, with notice that certificates will be granted to such applicants, if no objections are made thereto, on or before the second Monday in April, thereafter. And each and every person

Free persons of color must, annually, be registered in the clerk's office of the Inferior Court, and advertis'd

Clerk's Fee for this service.



Obligations how filed and acted on. desirous of objecting thereto, shall file such his objections in the office of such clerk, within the time specified in such notice, which proceedings shall be by the said clerk notified to the justices of the inferior court of such county, and shall be tried and determined in the manner herein-after pointed out. And the said clerk shall grant or withhold such certificate, according to the determination thereof: *Provided*, that the expense of such publication shall be defrayed out of the county funds, where the moiety of the several penalties prescribed by this act is appropriated to the county, and out of the funds of the city of Savannah, where such moiety is appropriated to the corporation of said city.

Certificate.  
Expense of  
publication.

Persons of color not complying with this act, how to be dealt with. [It sometimes occurs that slaves purchase their time of their owners, and then work at large for themselves; the Compiler conceives that the Legislature refers here to cases of that description.] 72. SEC. VI. All and every person of color, (Indians in amity with this State, or regularly articulated seamen or apprentices, arriving in any ship or vessel, excepted,) who shall, after the first Monday in May next, be found within the limits of this State, whose names shall not be enrolled in the book of registry described in the preceding section; (or having been enrolled, who shall have been refused certificates in the manner therein prescribed,) and who shall be working at large, enjoying the profits of his or her labor, and not in the employment of a master or owner, or of some white person, by and in virtue of an actual and *bonâ fide* contract, with the master or owner of such person of color, securing to such master or owner the profits arising from the labor of such person of color, shall be deemed, held and taken to be slaves, and may be arrested by warrant under the hand of any magistrate of this State, and such proceedings being had as are herein-after provided, shall be sold, by public outcry, as slaves, [see 87] and the proceeds of such sales shall be appropriated in the manner specified in the first section of this act.

Free persons of color compelled to perform public work; how many days in each year.

73. SEC. VII. All registered free persons of color, between the ages of fifteen and sixty years, shall be liable to do public work in the counties or corporate towns in which they may reside, under such regulations and on pain of such penalties for non-compliance as the justices of the inferior courts of the several counties, and the mayor and aldermen, or intendant and wardens, or commissioners, of such corporate towns, shall prescribe. And it shall be the duty of such justices of the inferior court, and of such mayor and aldermen, intendant and wardens, or commissioners, to call out such free persons of color, and employ them in public work, within their respective jurisdictions, for a term not exceeding twenty days in one year.

Not to purchase and possess slaves.

74. SEC. VIII. No free person of color within this State, (Indians in amity with this State, excepted,) shall be permitted to purchase or acquire any real estate, [see 81,) or any slave or slaves, either by a direct conveyance to such free person of color of the legal title of such real estate, or slave or slaves, or by a conveyance to any white person or persons of such legal title, reserving to such free person of color, the beneficial interest therein, by any trust, either written or parol; by any will, testament or deed; or by any contract, agreement or stipulation, either written or parol; and securing, or attempting to secure, to such free person of color, the legal title or equitable or beneficial interest therein; but all and singular, such real estate and each and every such slave or slaves, shall be deemed and held to be wholly forfeited, [see 80 and 81.] And the escheators in the several counties in this State, shall be and they are hereby required, to proceed against such property, in the manner pointed out by the several acts to regulate escheats in this State. And the proceeds of such forfeited property, shall after deducting ten per centum on the gross amount thereof, (which shall be paid to the person giving information of the same to the escheator, or to the escheator himself, if he shall discover the same, and the costs of the inquisition,) be appropriated, one half to the use of the county, (except in the county of Chatham, in which such moiety shall be paid to the

Slave property to be considered as having escheated.  
How proceeds to be disposed of.



corporation of the city of Savannah) and the other moiety shall be paid into the treasury of the State. And all and every person or persons who shall be concerned in covering or protecting such property, so as to secure, or attempt to secure, the legal or equitable title therein, to such free person or persons of color, contrary to the true intent and meaning of this act, shall be liable to a penalty, not exceeding one thousand dollars, which shall be sued for and recovered in the manner herein-after pointed out, and shall be appropriated in the mode prescribed in the first section of this act.

Persons attempting to defeat this law, how punished.

75. SEC. IX. All and singular, the penalties prescribed by this act, and each and every proceeding directed herein, except where it is otherwise specially provided thereby, shall be prosecuted, recovered and enforced, against all and every white person or persons, who shall become amenable thereto, by action of debt, or indictment in the superior courts of the respective counties, according to the ordinary course of proceedings therein. And the same shall be prosecuted, recovered and enforced, against all and every person or persons of color, whether free or slave, before the justices of the inferior courts of the respective counties, or a majority of them, either at the regular sessions of such courts, or at special sessions to be held for that purpose; which the said justices, or a majority of them, are hereby empowered to hold, and to do all needful and necessary acts therein for giving full effect to the provisions of this act. And the said justices shall, in like manner, be authorized to hear and determine, all objections which shall be made to the registry of any person of color, claiming to be free, reserving always, to the judges of the superior courts, the constitutional right of revising all such proceedings: for which purpose the said justices shall be required to make a special record of their several actings and doings in the premises, and of all evidence or testimony given therein, and to transmit the same, when required, to the said judges: *Provided always*, that in all trials which may be had under this act, except for the enforcement of penalties against white persons, the court shall be authorized to require the answers on oath, (to such questions touching the same, as they may deem relevant,) of all and every white person or persons, claiming title to such persons of color, or to any real or personal property which shall be proceeded against as forfeited under this act, or in whose employment such person of color may be, or who may be guardian of such person of color, and the same shall be read as evidence therein.

Penalties under this act how recovered.

What court has jurisdiction.

Questions of registry may be appealed upon.

Answer of claimant, etc., to be on oath, and read as evidence.

76. SEC. X. It shall be the duty of all courts and judges before whom any proceedings may be had under this act, so to construe the several provisions thereof, as to carry the same into full and complete operation, according to the true spirit, intent and meaning thereof, as declared in the preamble of the same. And all and every such courts and judges, are hereby invested with full power for such purpose, and are authorized and required to make all necessary rules and regulations, and to adopt all needful proceedings, not herein specially provided, according to the usual course of justice, which may be at any time required, for the purposes aforesaid.

Construction of this act, and how it is to be carried into operation.

77. SEC. XI. All warrants issued by any magistrate under this act, against any person of color, whether free or slave, shall be returned by the officer executing the same, to the justices of the inferior court of the county in which the same may be issued; and the said justices, or a majority of them shall proceed immediately, to hear and determine thereon, making such record of their proceedings, as is herein-before provided.

How warrants are to be returned and acted on.



*Petition for Registry, as a Free Person of Color.*

STATE OF GEORGIA, } *To the Inferior Court of said County.*  
 Houston County. } The Petition of *John Williams*, a person of color, sheweth, that your Petitioner is free, and as a free man of color, prays that his name may be Registered and a Certificate of Registry issue in conformity to law. Petitioner is prepared to establish his freedom, as by statute required. *John Doe* is the applicant's Guardian. This July 1, 1859.

JAMES WELLS, *Pet'r's Att'y.*

NOTE.—The Petitioner must be prepared to show, 1. That he is *bonâ fide* and truly, a free person of color, according to and under the laws of this State ; 2. Or has been registered in this State ; 3. Or has exercised all the privileges of a free person of color, for five years before the passing of the act of 1835, which see. The evidence must be filed away by the Clerk.

*Application for Registry, by Free Person of Color.*

STATE OF GEORGIA, } CLERK'S OFFICE, INFERIOR COURT,  
 Houston County. } July 1, 1859.

Whereas, *John Williams*, claiming to be a free man of color, applies to me for registry as such ; all persons interested are hereby notified and required, to file their objections (if any there be,) in my office, within the time specified by law, otherwise a certificate of Registry will be issued to the applicant. Said *John Williams* is *fifty-five* years of age, *five feet six inches* high, of *yellow* complexion ; was born in *Lenoir* County, State of *North Carolina*, and came into this State in the year eighteen hundred and *fifteen* ; resides in the County of *Houston*, and is by occupation a *Blacksmith*. *John Doe* is his guardian.

*Given under my hand and official signature,*

JOHN H. KING, *Clerk.*

NOTE.—The act of 1835, requires, (before the certificate of the Clerk shall issue,) that the applicant shall “establish by proof, to the satisfaction of the Inferior Court of said County, that he or she applying so to be registered, is *bonâ fide* and truly, a free person of color, according to and under the laws of this State ; or, has been registered in this State ; or, has exercised all the privileges of a free person of color for five years before the passing of this act.” The act of 1835, therefore, changes entirely, the mode of proceeding which had been previously pursued : now, before the Certificate of Registry can be granted by the Clerk, the action of the Inferior Court is required. Therefore, when an application is made to the Clerk, he proceeds to advertise, and submits the application to the Court. The Court may act upon the application in vacation ; thus—

STATE OF GEORGIA, } INFERIOR COURT, IN CHAMBERS,  
 Houston County. } July 15, 1859.

*John Williams*, a man of color, having submitted to the Court evidence of his being free ; it is ordered, that the Clerk register the name of said *John Williams*, and that he issue to said *John Williams*, a Certificate of Registry, in conformity with law.

JOHN RAGIN, J. I. C.

JOHN. D. WINN, J. I. C.

H. M. HOLTZCLAW, J. I. C.

*Certificate of Registry.*

STATE OF GEORGIA, }  
Houston County. }

CLERK'S OFFICE, INFERIOR COURT,  
July 15, 1859.

Whereas, *John Williams*, a free man of color, makes application for Registry; and whereas, notice of said application has been published, according to law, and no objection having been made; I do, therefore, in conformity to the statute in such case made and provided, and by authority of the Inferior Court, hereby certify, that said *John Williams* is duly and lawfully registered in my office, as a free man of color, residing in said County. Said *John Williams* is *fifty-five* years of age, *five feet six inches* high, of *yellow* complexion; was born in *Lenoir* County, State of *North Carolina*, and came into this State in the year eighteen hundred and *fifteen*; resides in the County of *Houston*, and is by occupation a *Blacksmith*. *John Doe* is his Guardian.

*Given under my hand and official signature,*

JOHN H. KING, *Clerk*.

## ACT OF 19TH DECEMBER, 1818.

Whereas, numbers of African slaves have been illegally introduced into this State, in direct violation of the laws of the United States and of this State—

78. SEC. I. *Be it therefore enacted*, That for the encouragement of those who have used, or shall use their efforts to suppress this traffic, by informing against and seizing the slaves so imported, they shall, on final condemnation of the same as forfeited to the State, receive one-tenth of the amount of the net proceeds of the sales of the same: *Provided*, nothing herein contained shall be so construed as to extend farther back than the year 1817.

Rewards offered in suppressing the African slave trade.

AN ACT to amend the act of 1818.—*Approved Dec. 22, 1819.*

79. SEC. I. All free persons of color contemplated in the above recited act, who fail to comply with the provisions therein contained, shall be and they are hereby declared to be exonerated, released and discharged from all pains or forfeitures to which they were thereby subjected, [see 126 and 153:] *Provided*, they do, on or before the first Monday in July next, and annually thereafter, on the first Monday in July, comply with the provisions contained in said act. *Provided*, that this act shall not extend to any case where there has been an actual forfeiture and sale.

Free persons of color exonerated from past liability, but must perform the requirements of the statute, hereafter.

80. SEC. II. All property held by any free persons of color, at the time of the passing of the above-recited act, shall not be deemed or considered as forfeited, but that the same shall remain in the owner, or in his or her descendants after his or her death.

Certain property not forfeited.

81. SEC. III. The eighth section of the act aforesaid, be and the same is hereby repealed, so far as relates to real estate, except in the cities of Savannah, Augusta and Darien.

Act of 1818 partially repealed.

82. SEC. IV. The above-recited act shall not extend to and operate upon free persons of color who are minors, and bound out, according to law.—[See 153.]

Certain minors excepted.

AN ACT to alter and amend the several laws for the trial of Slaves and Free Persons of Color, in this State.—*Approved Dec. 24, 1821.*

83. SEC. I. From and after the passing of this act, the following shall



What crimes declared to be capital, when committed by a slave or free person of color—insurrection, or an attempt to excite it—committing a rape, or attempting it, on a free white female—murder of a free white person, or murder of a slave, or free person of color—or poisoning of a human being; every and each of these offences, shall on conviction, be punished with death. And the following also, shall be considered as capital offences, when committed by a slave or free person of color—assaulting a free white person with intent to murder, or with a weapon likely to produce death—maiming a free white person—burglary, or arson of any description—also, any attempt to poison a human being; every and each of these offences, shall on conviction, be punished with death, or such other punishment as the court, in their judgment, shall think most proportionate to the offence, and best promote the object of the law, and operate as a preventive for like offences in the future.—[*See also, 98 and 99.*]

Duty of the Court in passing sentence. 84. SEC. II. Whenever a slave or free person of color is brought before the inferior court [*superior court—see 159*] to be tried for an offence deemed capital, it shall be the duty of said court to pass such sentence as may be pointed out by law for the offence of which such slave or free person of color may be guilty. And in case a verdict of manslaughter how punish'd. shall be found by the jury, the punishment shall be by whipping, at the discretion of the court, and branded on the cheek with the letter M.

SEC. III. [Repeals all conflicting laws.]

AN ACT to alter and amend an act for the ordering and governing of Slaves within this State, passed the tenth day of May, 1770.—*Approved Dec. 20, 1823.*

43d sec., act of 1770, repealed. 85. SEC. I. The forty-third section of the said act, passed the 10th day of May, 1770, for the ordering and governing of slaves within this State, be and the same is hereby repealed.

A white man on each plantation of ten or more slaves. 86. SEC. II. From and after the passage of this act, every owner or owners who may keep on a plantation the number of ten slaves or more, over the age of sixteen, shall be compelled to keep a white man, capable of bearing arms, as an overseer, manager or superintendent, on said plantation, under the penalty contained in the said forty-third section, so repealed.

AN ACT to repeal all laws and parts of laws which authorize the selling into slavery of Free Persons of Color.—*Approved Dec. 20, 1824.*

Free person of color not to be enslaved. 87. SEC. I. All laws and parts of laws which authorize the selling of free persons of color into slavery, be and the same are hereby repealed.

AN ACT to amend the law prohibiting slaves from selling certain articles, without license.—*Approved Dec. 20, 1824.*

Slave not to sell or purchase without ticket. - Penalty. 88. If any slave shall sell or purchase, without a ticket authorizing him so to do, any quantity or amount whatever, of cotton, tobacco, wheat, rye, oats, corn, rice or poultry; or any other article, except such as are known to be usually manufactured or vended by slaves, they shall suffer the pains provided by an act passed 19th December, 1818.—[*See Cobb's Penal Code, 182; number 285.*]

### *Permit to Purchase, under the above Statute.*

STATE OF GEORGIA, } The bearer, *Peter*, has permission to purchase  
Houston County. } *two pounds of Tobacco*, on his own account. This  
May 1, 1859.

RICHARD ROE, Overseer.



AN ACT to amend an act, entitled "an act supplementary to an act more effectually to enforce an act, entitled an act prescribing the mode of manumitting Slaves in this State. And also, to prevent the inveigling and illegal carrying out of the State Persons of Color.—*Approved Dec. 26, 1826.*

89. SEC. II. Previous to the granting of certificates of registry of freedom, it shall be the duty of the clerks of the superior and inferior courts of the several counties of this State, to give ten days' notice in one of the public gazettes, or in some other public manner, of the name of the applicant or applicants, his age, &c. and of his, or her, or their guardian or guardians.

Ten days' notice of application for Registry.

90. SEC. III. Such certificate of registry of freedom, when issued as aforesaid, shall contain an accurate description of the person, age, or [and] occupation, and residence of such person of color. And that the clerk, so issuing the same, shall be entitled to have and receive from the guardian of such person of color, the sum of five dollars. And should any free negro or person of color, transfer his or her certificate of registry of freedom, obtained as aforesaid, to any slave or free negro, or other person of color, such free negro or person of color, so offending, shall be punished, by such fine, imprisonment and other corporal punishment, as any court, competent to try slaves and free persons of color, may in its discretion, think proper to inflict.

Clerk's fee for Certificate of Registry.

Penalty for transferring certificate to another.

91. SEC. IV. If any captain of a vessel, mariner, or other person or persons, shall transport, entice, carry away or inveigle; or shall attempt to transport, entice, carry away or inveigle; or shall aid, abet, or in any wise assist, or be instrumental in the transportation, removal, enticing, inveigling; or going, running or carrying away, out of the State of Georgia, of any free person of color, or any other person of color claiming or pretending to claim to be free, who shall not have such genuine certificate of registry of freedom, duly issued to him or her as aforesaid, such person or persons so offending, shall be liable to be indicted as for a misdemeanor, and shall be punished by imprisonment in the common jail of the county, at the discretion of the court; and such person or persons, and each and every of them, shall also forfeit and pay the sum of \$500, for each offence so committed, to be sued for or prosecuted by action of debt, as on the case, in the name of the State, in any court having competent jurisdiction thereof, at any time within five years after the commission of the offence, one-half of which forfeiture when recovered, shall be for the use of the State, and the other half to the use of the informer. And it shall [be] the duty of the attorney-general or solicitor-general who shall be assigned or appointed to prosecute the pleas of the State, in the county where the said action is cognizable, to sue and prosecute for said sum whenever he shall be informed of any such offence: *Provided nevertheless*, that it shall and may be lawful for any such person, to sue and prosecute for said sum, if such attorney or solicitor-general shall not have previously sued or prosecuted therefor.

Captains of vessels or other persons, carrying away, unlawfully, free persons of color, how punished.

Attorney or sol. gen. to prosecute offenders, etc.

92. SEC. V. No colored seaman arriving from any port whatever, (except from ports in South Carolina,) shall be suffered to leave the vessel in which they have arrived, in any port of this State, from the hours of six o'clock in the evening until five o'clock in the succeeding morning, [but see 179.] And it shall be the duty of every captain of a vessel having such seamen, as aforesaid, on board, to report to the chief magistrate of the city or town, where the vessel is, a particular description of the seamen and their names. And the said captain shall give bond with two securities, in the sum of \$100, for each seaman aforesaid, payable to the

Colored seamen must not leave the vessel within certain hours. Duty of the captain.

Captain to give bond and



security ; con- chief magistrate of the city or town where the vessel is, conditioned for  
ditions of the the maintenance of each seaman ; [or] for the retaining each on board his  
bond. said vessel, as is above required, and for the taking, removing and carrying  
away, each of said seamen, when the vessel departs, whether (by the  
articles entered into) the said port, of this State, be a port of discharge or  
not.

How bonds 93. SEC. VI. If the said captain shall violate, or omit to perform any  
are to be sued of the provisions or conditions of said bond, so entered into, it shall be the  
upon and re- duty of the aforesaid chief magistrate, to direct the solicitor-general of the  
covered. circuit court or recorder of the city in which the vessel is, or employ any  
solicitor or attorney, to sue the same, in any court having competent juris-  
diction ; and the amount recovered on said bond, shall be paid into the  
treasury of such town or city.

SEC. VII. [General repealing section.]

AN ACT more effectually to enforce the provisions of the statute of 1826,  
[the foregoing] so far as the same regards the arrival of persons of  
color in the several ports and waters of this State.—*Approved Dec. 26,*  
1827.

Duty of cap- 94. SEC. I. Whenever any vessel shall arrive in any of the ports or  
tain of ves- waters of this State, it shall be the duty of the master or captain thereof,  
sels, on arriv- to repair within twenty-four hours after the arrival aforesaid, to the near-  
ing in ports of est city or town, and make a report to the mayor, intendant or other chief  
this State. magistrate thereof, of any colored persons on board of his vessel, and give  
bond agreeably to the provisions of the fifth section of the act passed the  
twentieth day of December, 1826, under the penalty of one hundred dol-  
lars for every such person omitted to be so reported and bonded.—[*See*  
179.]

Penalty how 95. SEC. II. The said penalty shall be sued for and recovered in the same  
sued for and manner as is prescribed in the sixth section of the said act, passed on the 20th  
recovered. day of December, 1826, aforesaid, entitled, "an act to amend an act, entitled  
an act supplementary to an act, more effectually to enforce an act, entitled an  
act prescribing the mode of manumitting slaves in this State ; and also, to pre-  
vent the inveigling and illegal carrying out of this State, persons of color."

AN ACT to amend the acts concerning the Guardianship of Free Persons of  
Color.—*Approved Dec. 21, 1829.*

Whereas, it frequently happens that the citizens of this State decline a per-  
manent guardianship of free persons of color, by which the ends of justice are  
prevented—

Free person of 96. SEC. I. *Be it enacted*, That from and after the passage of this act, free  
color may sue persons of color may exercise the right heretofore secured to them, of suing  
and defend by and being sued, pleading and being impleaded, answering and being answered  
next friend. unto, by the aid of a next friend, as well as by a guardian.

Guardians of 97. SEC. II. Guardians of free persons of color shall have the privilege,  
free persons of with the consent of the inferior courts, of resigning their appointments, at any  
color may time they may wish to do so.  
resign.

AN ACT to amend the several laws of this State, for the trial and punishment  
of Slaves and Free Persons of Color.—*Approved Dec. 22, 1829.*

Capital offen- 98. SEC. I. From and after the passing of this act, the wilful and malicious  
ces by slave burning, or setting fire to, or attempting to burn, a house in a city, town or  
or free person village, when committed by a slave or free person of color, shall be punished  
of color, des- with death.  
ignated.

99. SEC. II. The wilful and malicious burning a dwelling-house, on a farm



or plantation, or elsewhere, (not in a city, town or village,) or the setting fire thereto, in the night-time, when the said house is actually occupied by a person or persons, with intent to burn the same, when committed by a slave or free person of color, shall be punished with death.

100. SEC. III. The trial of offenders against the provisions of this act, shall be had in the same courts, and conducted in the same manner, and under the same rules and regulations, as are provided by the several acts now in force in this State, for the trial of capital offences when committed by a slave or free person of color.—[See 159.]

SEC. IV. [Repeals generally all repugnant laws.]

AN ACT to amend an act passed on the 16th day of December, 1811. And also, an act passed on the 19th day of December, 1816, in relation to Slaves and Free Persons of Color.—*Approved Dec. 22, 1829.*

101. SEC. I. In all trials and proceedings before justices of the peace and justices of the inferior courts, under and by virtue of the act passed on the 16th day of December, 1811, and of the act passed on the 19th day of December, 1816, in relation to slaves and free persons of color, and of any acts amendatory thereof, when either party shall be dissatisfied with any decision of the court before whom such trial and proceedings may be had, affecting the real merits thereof, such party shall and may offer exceptions in writing to such decision, which shall be signed by such party, or his or her attorney; and if the same shall be overruled by said court, the party making the exceptions may, on twenty days' notice to the opposite party, or his or her attorney, apply to one of the judges of the superior court, and if such judge shall deem the exceptions sufficient, he shall forthwith, issue a writ of *certiorari* to said justices, or to the clerk of the inferior court, as the case may be, requiring the proceedings in said matter to [be] certified and sent to the superior court next to be held in and for the county in which said proceedings or trial, may have been had. And at the term of the court to which such proceedings shall be certified, said superior court shall determine thereon, and make such order, judgment and decision, as shall be agreeable to law and justice.

102. SEC. II. When exceptions shall be offered in manner aforesaid, the said justices before whom said trials or proceedings may be, shall suspend the execution of their judgment and sentence for forty days. And when a *certiorari* shall be sanctioned, in manner aforesaid, the judge issuing the same, shall order the said judgment and sentence to be suspended until the final order and decision of the superior court shall be had in the cause.

### Exceptions.

THE STATE }  
vs. }  
JACOB, a Slave. } Accusation of *Assault upon a white person*, before *James Mack and John Doe, Esq's, Justices of the Peace, of Houston County*, and judgment against said *slave*, and order that he receive *thirty-nine lashes, on the bare back*.

*Richard Roe*, the owner of said *slave*, being dissatisfied with the decision in the above-stated case, hereby excepts to said decision, and for cause of exception says—

1st. Because, [here set out in full the cause of exception, which must relate to the merits of the case, either in law or fact.]

2d. Because, etc.

RICHARD ROE, Owner.

The above Exceptions were submitted by *Richard Roe*, and overruled by the Court. This May 2, 1859.

JAMES MACK, J. P.  
JOHN DOE, J. P.



*Notice of Application for Certiorari.*

STATE OF GEORGIA, ) To *Samuel Towns*,—You are hereby notified  
     *Houston County.* ) that I shall, within the time prescribed by law,  
 apply to the Superior Court of *Houston County*, for a Writ of *Certiorari*,  
 in the case of the slave *Jacob*, who is accused before *James Mack and*  
*John Doe, Esq's*, Justices of the *Peace*, of *Assault upon a white person*,  
 upon the following grounds. [*Set out the grounds, as contained in the*  
*Exceptions.*] RICHARD ROE, Owner.

NOTE.—A copy of the above Notice should be filed with the Justices of the Peace whose proceedings have been excepted to.

For the form of the writ of *Certiorari*, see title Judiciary; subject, *Certiorari and Injunction*.

AN ACT to authorize the Sheriff of Jefferson County to sell a run-away Slave, [*and*] to apply the proceeds of said sale. And to authorize the sale of all run-away Slaves, after they have been confined and advertized twelve months. And to prescribe the time and place of advertising run-away Slaves.—*Approved Dec. 22, 1832.*

Jailer to ad-  
vertise run-  
away slaves.

103. When a run-away slave is committed to any jail in this State, it shall be the duty of the jailer to prepare a notice containing a fair description of the name, age, height, and complexion of said slave, together with the time of his commitment, and the name of the person to whom said slave reports himself to belong; which notice shall be published [*in one of the Milledgeville papers—but see 158,*] and such other paper as said jailor may direct.

If slave be not  
claimed, then  
to be adver-  
tised by the  
sheriff.

104. If no person appears and claims said slave after he or she has been advertised as aforesaid, then it shall be the duty of said jailer to give notice thereof to the justices of the inferior court of said county, who shall cause said slave to be levied on by the sheriff of said county, as a runaway slave, and advertised to be sold on the first Tuesday in the month; said advertisement to be published in the same paper, and for the same time that he advertises his sheriff sales.

If still un-  
claimed, to be  
sold by the  
sheriff.

105. If no person appears to claim and prove property in said slave, then it shall be the duty of said sheriff to sell said slave for cash, to the highest bidder, and after paying jail-fees and all other expenses that may have been incurred on account of said slave; to pay over the balance to the clerk of the inferior court, to become and used as county funds.

If owner ap-  
plies, net pro-  
ceeds to be  
paid to him.

106. If any person should appear, any time within one year after the sale of said slave, and produce satisfactory testimony, that he, she or they were the rightful owner of said slave before the sale thereof, then it shall be the duty of the justices of the inferior court, to have so much of the proceeds of the sale of said slave, as has been paid to the clerk of the inferior court, to be paid over to the person or persons establishing their right thereto.

Sheriff must  
write to  
owner.

107. It shall be the duty of the sheriff to write to the owner of such slave, immediately on receiving him in jail.

*Jailer's Advertisement of Run-away Slave.*

STATE OF GEORGIA, ) Brought to the Jail of said County, by *John*  
     *Houston County.* ) *Brooks*, a run-away slave, who says his name is  
*Pompey*, and that he belongs to *Richard Roe* of *Wayne County*,  
 in said State. Said slave is *five feet, ten inches* high; of yellow com-

plexion, and weighs *one hundred and sixty* pounds; supposed to be *thirty* or *thirty-five* years of age. The owner of said slave is hereby notified and required to come forward, pay the charges against him, prove property and take him away; otherwise, he will be sold, according to law. This *May 19, 1858.* JOHN DOE, *Jailer.*

NOTE.—If any person appears to Claim the slave thus advertised, the Jailer should refer him to the Justices of the Inferior Court, to whom the claimant should submit his proofs of property. If the Court be satisfied with the proofs submitted, an order should be passed, authorizing the Jailer to deliver up the slave on the payment of the charges against him. If no person appear, within the time prescribed by law, for the purpose of claiming the slave, the Jailer must submit the matter, with his account of charges, to the Inferior Court. The Court, after investigating the case, should pass an order allowing the charges of the Jailer and authorizing the Sheriff to levy on the slave, advertise and sell him, for the purpose of paying the charges. The Court may act on this subject at a special session for that purpose.

### *Sale of Run-away Slave.*

STATE OF GEORGIA. } On the first Tuesday in *July* next, will be sold,  
   *Houston* County. } before the Court-House door, in said County,  
 between the lawful hours of sale, an unclaimed run-away slave, named *Pompey*, *thirty* or *thirty-five* years of age, *five feet ten inches* high, of *yellow* complexion, weighs *one hundred and sixty* pounds, says he belongs to *Richard Roe* of *Wayne* County. Sold under an order of the Inferior Court of said County, in order to pay charges. This *May 2, 1859.* JOHN HALSTEAD, *Sheriff.*

NOTE.—From the proceeds of the sale, the Sheriff must pay the charges allowed by the Inferior Court, in favor of the Jailer. And after deducting his own fees, pay the balance into the hands of the County-Treasurer.

AN ACT to establish an Infirmary for the relief and protection of aged and afflicted Negroes, in the State of Georgia.—*Approved Dec. 24, 1832.*

*Whereas*, Thomas F. Williams, late of Chatham county, deceased, did by his last will and testament, make therein, certain bequests to the first incorporated body for the establishment of an Infirmary, within the State of Georgia, for the relief and protection of aged and afflicted Negroes, residents of the State of Georgia. *And whereas*, no such incorporation hath heretofore been created, and the establishment of such a body is calculated to subserve the cause of humanity, and may be an inducement to the exercise [of] similar benevolence in others—

108. SEC. I. *Be it enacted*, That [the incorporators named] and their successors, [see 142,] be and they are hereby constituted and appointed a body corporate, to be located in the county of Chatham, under the name of "The Georgia Infirmary, for the relief and protection of aged and afflicted Negroes." Infirmary incorporated.

109. SEC. II. The said [corporators,] or a majority of them, shall on the first Monday in January, ensuing the passing of this act, and on the first Monday in every January thereafter, proceed to elect, by ballot, a president, vice-president, secretary and treasurer, the last of whom shall give security, in such amount as the said corporation may by their by-laws direct. And the said corporation shall and may at such other time as they may by resolution or by-law fix, proceed to elect, by ballot, all other officers and agents, as may be by them deemed necessary for carrying into full effect, the object and intent of this act. And the said corporation, or a majority of them, shall at each of their annual meetings, held on the first Monday in January, as directed by this act, Officers when to be elected.  
May appoint standing committee.



designate such portion of their body as they may deem proper, to act as a standing committee, who shall have power to transact all the ordinary business connected with the institution, for the year ensuing their appointment.

Omitted elec- 110. SEC. III. The said incorporated body, or a majority of them, shall  
tions not to have power, from time to time, to fill all vacancies which may occur by death,  
work a disso- resignation or otherwise, among their said officers and agents; and in no case  
lution of the of failure of said corporation to elect their said officers and agents, in confor-  
corporation. mity with the provisions of this act, shall the said corporation be, for that  
cause, dissolved; but they shall thereafter, proceed to elect the same, at such  
time and place as shall be appointed by the president: *Provided*, thirty days'  
notice of the time and place of such election, be publicly given.

What descrip- 111. SEC. IV. The said corporation shall have full power and authority, to  
tion of Ne- take and receive into their said institution, and there maintain, all such afflicted  
groes the cor- and aged negroes, residents in the State of Georgia, as they, or a majority of  
poration may them, shall deem fit and proper objects for the exercise of benevolence: *Pro-*  
receive. *vided nevertheless*, that nothing herein contained shall be so construed as to  
authorize said corporation to retain any slave or slaves, against the consent of  
the owner or owners of such slave or slaves.

May receive, 112. SEC. V. The said corporation shall have authority, (for such compen-  
for pay, sick sation as they may hereafter fix on by the by-laws,) on the application of any  
or disabled owner or owners of any such disabled or afflicted slave or slaves, to take and  
slaves. receive into their said institution, such slave or slaves, for such compensation  
as aforesaid: *Provided*, such compensation shall be applied to the support of  
the said institution.

General pow- 113. SEC. VI. The said trustees, under their said name of incorporation,  
ers of the shall have power to receive and apply the bequest of the said Thomas F. Wil-  
corporation. liams, deceased, to and for the purpose set forth in his said will; and to re-  
ceive and hold all such donations of real or personal estate, as may hereafter  
be given, granted or devised to them for the benefit of said institution; to pur-  
chase and hold all such real estate as may be necessary to carry into full effect,  
the object and intention of this act; to place at interest on real security, all  
surplus capital; to sue and be sued; contract and be contracted with; to have  
a common seal; to appear by attorney, and to make all such by-laws and reg-  
ulations for the government and benefit of said institution, as are not incon-  
sistent with the constitution and laws of this State, and as they, or a majority  
of them, shall deem necessary: *Provided nevertheless*, that the said corpora-  
tion, shall on the first Monday in January in each and every year, make a re-  
turn to the justices of the inferior court of Chatham county, of all their actings  
and doings, under the authority vested in them by this act.

SEC. VII. [The usual repealing section.]

AN ACT concerning Free Persons of Color, their Guardians, and Colored Preachers.—*Approved Dec. 23, 1833.*

Must have 114. SEC. III. It shall not be lawful for any person to give credit to any  
written order. free person of color, but on a written order of the guardian.

Penalties how 115. SEC. IV. If neither the guardian nor the ward have property to pay  
recovered. any penalty which may be awarded under this act, or any debt which may be  
contracted under the written order of the guardian, it may be lawful for the  
court to bind out such ward and upon such terms as they may think proper,  
to satisfy such penalty or debt.

Must not 116. SEC. V. No person of color, whether free or slave, shall be al-  
preach or ex- lowed to preach, to exhort, or to join in any religious exercise, with any  
hort, without person of color, either free or slave, there being more than seven persons  
authority, [to of color present. They shall first obtain a written certificate from three  
colored con- ordained ministers of the Gospel, of their own order; in which certificate  
gregations.]



shall be set forth the good moral character of the applicant, his pious deportment and his ability to teach the Gospel; (having a due respect to the character of those persons to whom he is to be licensed to preach;) said ministers to be members of the conference, presbytery, synod or association to which the Churches belong, in which said colored preachers may be so licensed to preach; and also, the written permission of the justices of the inferior court of the county; and in counties in which the county-town is incorporated, in addition thereto, the permission of the mayor or chief officer, or commissioners of such incorporation. Such license not to be for a longer term than six months, and to be revokable, at any time, by the persons granting it. Any free person of color offending against this provision, to be liable, on conviction, for the first offence, to imprisonment, at the discretion of the court, and to a penalty not exceeding five hundred dollars, to be levied on the property of the person of color; if this is insufficient, he shall be sentenced to be whipped and imprisoned, at the discretion of the court: *Provided*, such imprisonment shall not exceed six months, and no whipping shall exceed thirty-nine lashes.

Penalty.

117. SEC. VI. Each offence under this act, may be prosecuted by indictment in the superior court of the county in which the same shall have been committed; and the penalties shall be recoverable by *quitam* action in the superior or inferior court, one-half to the use of the informer, and the other to the use of the county academy.

What Court has jurisdiction.

118. SEC. VII. From and after the passage of this act, it shall not be lawful for any free person of color in this State, to own, use, or carry fire-arms of any description whatever.

Not to carry fire-arms.

119. SEC. VIII. Upon information given, upon oath, to any justice of the peace of any county in this State, of any free person of color owning, using or carrying fire-arms, as aforesaid, it shall be his duty to issue his warrant for the arrest of said free person of color, to answer said charge before him, or any other justice of the peace in the county where said offence may be committed; and upon sufficient proof thereof, it shall be the duty of said justice, to order and adjudge, that the free person of color, so detected in owning, using or carrying fire-arms, shall receive upon his bare back thirty-nine lashes; and that the fire-arms so found in the possession of said free person of color, shall be exposed to public sale, after giving fifteen days' notice of the time and place thereof, at three of the most public places in the district; and the money arising from the sale of said arms, shall be appropriated by said justice of the peace, to the payment of the cost which may accrue in said prosecution; and the over-plus, if any there be, to be delivered by said justice to the informer against the offender.

Offenders how punished.

Arms to be sold.

Money how applied.

SEC. X. [The common repealing section.]

AN ACT more effectually to protect Free Persons of Color, and to point out the mode of trying the Right of Freedom.—*Approved Dec. 26, 1835.*

*Whereas*, free persons of color are liable to be taken and held fraudulently and illegally in a state of slavery by wicked white men, and to be secretly removed whenever an effort may be made to redress their grievances, so that due inquiry cannot be had into the circumstances of their detention, and their right to freedom; for remedy whereof—

120. SEC. I. *Be it enacted*, That it shall and may be lawful for any justice of the inferior court of any county in this State, upon the complaint of any free person of color, that he, she or they are fraudulently and ille-

Proceedings where colored persons are



unlawfully  
held in sla-  
very.

gally held in slavery, to make due inquiry into all the circumstances of the case, and if upon such examination, the justice shall be satisfied that there is probable ground to believe that such complainant or complainants are improperly and illegally held in a state of slavery, it shall be his duty to order such person or persons into the custody of the sheriff of the county, until the pretended owner or owners shall enter into bonds, with good security, for double the value of such person or persons of color, not to remove, or attempt to remove, such free person of color from the county where this examination is held, before the cause is finally adjudicated; whereupon, it shall be the duty of the sheriff to deliver such persons of color to such pretended owner. But, if the persons claiming to be the owners or proprietors of such person or persons of color, fail or refuse to give bond and security, as aforesaid, the sheriff shall retain him, her or them, in his possession.—[See 137.]

Case when to  
be tried;  
one continu-  
ance allowed.

121. SEC. II. It shall be the duty of the justice of the inferior court before whom the examination is had, to reduce the statement to writing, and to return the same to the clerk of the inferior court of the county, who shall docket the case, stating the names of the parties, &c., which shall stand for trial the first court after the same is docketed, unless either party, for want of evidence or other sufficient cause, should move to continue the cause, which may be done for one term and [no] longer.

Appeal al-  
lowed.

122. SEC. III. The inferior court shall cause the parties to make up an issue, involving the complainant's right to freedom, which shall be submitted to a jury, as in other cases; but, either party being dissatisfied with the verdict, shall be permitted to appeal to the superior court, without giving bond and security, as in other cases.

On verdict in  
his favor,  
complainant  
to be set at  
liberty.

123. SEC. IV. Should the complainant, upon the final trial of the case, succeed in obtaining a verdict in his favor, the court shall order such person of color to be set at liberty, and a guardian to be appointed, as is now regulated by law.

AN ACT to amend the twenty-ninth section of an act entitled "an act for ordering and governing slaves within this Province. And for establishing a jurisdiction for the trial of offences committed by such Slaves, and other persons therein mentioned. And [to] prevent the inveigling and carrying away Slaves from their masters, owners or employers," passed 10th May, 1770.—*Approved Dec. 26, 1835.*

Whereas, the twenty-ninth section of said act does not make it penal with free persons of color, to harbor, conceal or entertain any slave, who may be a run-away, but merely inflicts a fine on such free person of color; for remedy whereof—

Free persons  
of color sub-  
ject to the  
same punish-  
ment as  
slaves, for har-  
boring slaves,  
etc.

124. SEC. I. *Be it enacted*, That from and after the passage of this act, all free persons of color within this State, who shall harbor, conceal or entertain, a slave or slaves, who shall be charged or accused of any criminal matter, or shall be a run-away, shall upon conviction, (in addition to the penalty already provided for in said section,) be subject to the same punishment as slaves are, under said section of the above-recited act.

Suspected  
houses may be  
searched by  
any Con-  
stable.

125. SEC. II. Any lawful constable having reason to suspect that run-away slaves, or such negroes, who may be charged or accused of any criminal offence, are harbored, concealed or entertained in the house or houses of such slaves or free persons of color, they or any of them, are authorized to enter such house or houses, and make search for the said run-away or run-aways, or accused criminal or criminals.

SEC. III. [Repeals all laws which conflict with this act.]



AN ACT to amend the several laws now in force in relation to Slaves and Free Persons of Color.—*Approved Dec. 26, 1835.*

126. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall not be lawful for the clerk of any county in this State, to register, as free persons of color; or to grant a certificate of such registry, to any person of color, who shall not establish by proof, to the satisfaction of the inferior court of said county, that he or she, applying so to be registered, is *bonâ fide* and truly a free person of color, according to and under the laws of this State; or, has been registered in this State; or, has exercised all the privileges of a free person of color for five years before the passing of this act. That it shall be the duty of such clerk to file in his office, the evidence on which he shall grant such application; and that any clerk violating this law, shall be guilty of a high misdemeanor, and on conviction, shall be subject to a fine of three hundred dollars, to be paid, one-half to the informer, the other half to county purposes.

What kind of proof necessary to procure certificate of freedom.

Clerk must file proof in his office. Penalty on Clerk for violation of this law.

127. SEC. II. From and after the first day of June next, it shall not be lawful for any person of color, other than a slave, or a free person of color, duly admitted to register, in manner aforesaid, to remain in this State, [see 176.] And if any free person of color, other than as aforesaid, shall be found in this State, after the said first day of June next, he or she shall be arrested and tried, and if convicted of a violation of this law, he or she shall pay a fine of \$100, and in default of such payment, it shall be lawful for the court to bind them out as laborers, until the fine is paid by the hire of such labor, and shall, moreover, be liable and subject to a repetition of such conviction, fine and punishment, at the end of thirty days after any such conviction and payment of such fine, until he or she shall actually depart this State. And that it shall be the duty of such [each] and every civil officer of this State, to carry into effect this law.

Colored persons, other than slaves or registered free persons, not to remain in this State.

128. SEC. III. From and after the passage of this law, it shall not be lawful for any free person of color who shall leave this State, other than to go to an adjoining State, again to return to it. And any and every free person of color entitled, under the laws of this State to registry, who shall, after the passage of this law, go out of this State, to any place, other than an adjoining State, for a temporary or other purpose, he or she, so leaving this State, shall thereby, forever, forfeit, and lose his or her rights to registry, as aforesaid, and all rights to reside in this State; and if thereafter, found in this State, he or she shall be dealt with and subject to the pains and penalties described in the second section of this act.

Registered persons, under certain circumstances, lose their rights.

129. SEC. IV. When any person of color charged with a violation of this act, shall be claimed by any individual, as a slave, such claimant, or his or her agent, shall depose on oath, "that such person of color is, in law, the slave of such claimant, and not nominally held as such, or in violation or evasion of the fourth section of the act of 1818, or other laws of this State," and in default of such oath, such person of color shall be deemed and adjudged, liable to the pains and penalties described in the second section of this act.

Persons claiming such colored person, to make oath, etc.

130. SEC. V. From and after the passage of this act, it shall not be lawful for any male slave, who shall after the passage of this act, have been in any State usually known as a non-slave-holding State, or in any foreign country, to come or be brought into this State, by his owner or any other person; and any and all male slaves who shall come or be brought into this State, after the passage of this act, in violation thereof, shall on conviction thereof, be forfeited and sold as a slave, and the net proceeds of such sale, shall be paid, one-half to the informer; the other half, to county purposes. And the person or persons bringing or aiding such male slaves to come into this State, on indictment

No male slave who has been in a non-slave-holding State, shall come into this State.

The person bringing such



- slave, how punished. for misdemeanor and on conviction thereof, shall be fined and imprisoned, or either, at the discretion of the court.
- Inferior Courts to have jurisdiction under this act. 131. SEC. VI. The inferior courts of the several counties of this State, shall have jurisdiction of the several offences created or mentioned, by this act, in all cases in which by the constitution of the State, jurisdiction may be entertained by them.
- Certain persons exempt from the penalties of this act. 132. SEC. VII. The provisions, prohibitions and penalties of this act, shall not extend to any American Indian, free Moor or Lascar. But, the burden of proof, in all cases of arrest of any person of color, shall be on such person of color, to show him or herself, exempt from the operations of this act.
- Inferior Court may deny registration to free persons of bad character. 133. SEC. VIII. The inferior courts of the several counties in this State, shall have power and discretion, to refuse and deny to any free person of color of bad character, the right to register his or her name. And such free person of color shall then, after such refusal, be deemed and held a free person of color in this State, in violation of this law, and be liable and subject to the pains and penalties herein prescribed.

AN ACT to be entitled, an act to prohibit the employment of Slaves and Free Persons of Color, from compounding or dispensing of Medicines in Druggists' and Apothecaries' Stores. And to compel Druggists and Apothecaries to keep Arsenic and other dangerous Poisons, under lock and key, &c.—*Approved Dec. 26, 1835.*

- Persons of color not to be employed by druggists in mixing and vending drugs etc. 134. SEC. I. From and after the first day of January next, any person or persons having in his, her or their employment, any slave or free person of color, in any apothecary-shop or druggist-store in this State, in the apothecary branch of their business, in putting up, compounding or dispensing, purchasing or vending, any drug or drugs, medicines of any description, kind or sort whatsoever, shall be guilty of a high misdemeanor, and on conviction thereof, in any court having cognizance of the same, shall be fined the sum of one hundred dollars for the first offence, and for every subsequent offence, shall be fined in the sum of five hundred dollars, one-half of said fine to go to the informer, and the other half into the county-treasury, for county purposes.
- Of what the offender is guilty, and how punished. 135. SEC. II. Every druggist or apothecary, or any other person or persons, vending any medicines of a poisonous quality, shall not vend the same to any person or persons of color, under the penalties aforesaid.
- Poisonous drugs not to be vended to persons of color. 136. SEC. III. Nothing in this act shall be so construed as to prevent druggists and apothecaries from employing any negro, or free person of color, in that branch of their business which does not require them to open their drugs or medicines, or compound or dispense the same, but they may be permitted to employ said persons to perform the laborious part of preparing drugs, part of their work, under the immediate direction and control of some white person.
- Persons of color may be employed in the laborious part of preparing drugs, under control.

AN ACT to amend an act passed the 26th December, 1835, entitled "an act more effectually to protect Free Persons of Color. And to point out the mode of trying the right of Freedom.—*Approved Dec. 25, 1837.*

*Whereas*, free persons of color are liable to be taken and held, fraudulently and illegally, in a state of slavery, by wicked white men, and to be secretly removed, whenever an effort may be made to redress their grievances, so that due inquiry cannot be had, into the circumstances of the detention of the same and their right of freedom, for remedy whereof—

- Where any person of color, claiming to be free, is 137. SEC. I. *Be it enacted*, That it shall and may be lawful for any justice of the inferior court of any county of this State, upon the complaint of any free white person, upon oath, showing that he has good reason to



believe and does believe, that any person or persons of color are free, and held in slavery, are fraudulently and illegally held in slavery, (the said oath to be made in the county where the persons owning such slave may reside,) to issue his warrant, directed to the sheriff of said county, or any lawful constable thereof, requiring the said sheriff or constable, as the case may be, to arrest the person or persons so holding such person or persons of color in slavery, as well also, the persons of color, and cause the same to be brought before him, that due inquiry into all the circumstances of the case may be had; and if, upon such examination, the said justice shall be satisfied that there is probable ground to believe that such person or persons of color, are improperly and illegally held in such a state of slavery, it shall be his duty to require such person or persons so holding and illegally detaining such person or persons of color, to enter into bond, with two or more good and sufficient securities, payable to such person giving such information and filing such affidavit as the *prochien ami* of said persons of color, in a sum of double the amount of the value of said person or persons of color would be, if they were slaves; conditioned for the delivery of said person or persons of color, and a compliance with the final order and decree to be had in such cases, to be instituted agreeably to the provisions of the act for the freedom of the same; and further conditioned, that said person or persons of color shall not be removed beyond the limits of said State. And on their failure to enter into such bond, as aforesaid, it may and shall be lawful for the said justice aforesaid, to cause the said person or persons of color, to be delivered to the person filing the said affidavit, on his giving bond with two or more good and sufficient securities, payable to such person or persons holding said person or persons of color, (to the said pretended owner,) as also, for the payment of the value of their hire and use of the same: *Provided*, it should appear on the trial of the said suit, that such person or persons of color, were slaves, and not illegally held in slavery; and also, further conditioned, not to remove or attempt to remove, such person or persons of color from the limits of said county and State.

Bond and Security to be given by the Defendant.

Bond and Security to be given by the *Prochien ami*.

138. SEC. II. It shall be the duty of the said justice of the inferior court before whom such complaint shall be made, and before whom such affidavit shall be filed, to require of the party making the same, to enter into bond with one or more sufficient securities, in a sum not less than the reasonable value of the person or persons of color, for whose freedom he, she or they, is or are about to sue, payable to the person or persons charged with holding illegally, such person or persons of color, as aforesaid, conditioned to pay all damages that may be sustained by the owner of such person or persons of color, in suing out the same; as also, all costs that may accrue thereon, in the event it shall appear on the trial of the same, that such person or persons of color are not entitled to their freedom, and are slaves.

*Prochien ami* to give bond before commencing proceedings.

139. SEC. III. It shall be the duty of the said justice before whom such affidavit is made and such examination is had, to reduce the same to writing, and return the same, together with all the proceedings had thereon, twenty days before the sitting of the court, to the clerk of the superior court of the county wherein such examination was had, who shall docket the case or cases, stating the names of the parties; wherein the party filing said affidavit shall be plaintiff, and the persons charged as holding said person or persons of color illegally, shall be defendants. And it shall be the duty of the *prochien ami* to file his petition to said court, stating the grounds upon which said negro claims his right to freedom, which shall contain the facts set forth in the said examination; which said issue shall stand for trial as all other actions or suits at common law: *Provided*, that

Examination to be reduced to writing and returned to the Clerk of the Superior Court, etc.

*Prochien ami* to file his petition, etc.



the applicant may assume any new grounds at the time, by giving three months' notice to the adverse party.

Issue, trial,  
and appeal.

140. SEC. IV. The superior court, to which any case involving the right to freedom of any person of color, shall be returned, shall cause the parties, according to the foregoing provisions of this act, to make up said issue, and shall be tried by a jury, as at common law trials in other cases; but either party being dissatisfied with the verdict, shall be permitted to enter an appeal by the payment of cost, without giving bond and security, as in other cases.

If found free  
to be dis-  
charged, etc.

141. SEC. V. Should it appear upon the final trial of the case, that the said person or persons of color were free, and entitled to their freedom, it shall be duty of the said court to order such person or persons of color to be set at liberty, and a guardian or guardians to be appointed, as is now regulated by law.

SEC. VII. All laws militating against this act, be and the same are hereby repealed.

AN ACT to amend "an act to establish an Infirmary for the relief and protection of aged and afflicted Negroes, in the State of Georgia," passed the 24th day of December, 1832.—*Approved Dec. 28th, 1838.*

*Whereas*, in and by the said act, no provision is made for the purpose of supplying and filling vacancies which may occur in the said corporation, by the death, resignation or removal of its members. *And whereas*, several vacancies in the said board, do now exist, and others which have occurred have been filled by the existing members, who entertain doubts of their authority to do so, under their present charter—

Majority may  
fill vacancies.

142. SEC. I. *Be it enacted*, That the said incorporated body, or majority of them, shall have full power, from time to time, to fill all vacancies which have occurred or may occur, in the said incorporated body, by the death, resignation, removal or otherwise, of any of its members. And that all appointments or elections already made by the said corporation, to supply vacancies heretofore existing, be and the same are hereby confirmed and made valid and good, from the time of such appointments or elections, respectively.

Former ap-  
pointments  
confirmed.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT the better to secure and protect the citizens of Georgia in the possession of their slaves.—[*The port of Savannah exempted from the operations of this act, by act of 1842.*—*Approved Dec. 11, 1841.*

*Whereas*, much injury has resulted to the people of Georgia, in consequence of the abduction and unauthorized transportation of their slaves, by vessels sailing to ports without the limits of Georgia. *And whereas*, it is the duty of the General-Assembly to guard against such injury, in the most peaceable and constitutional manner; for remedy whereof—

Persons own-  
ing or char-  
tering vessels  
sailing from  
ports in this  
State to give  
bond and se-  
curity in cer-  
tain cases.

143. SEC. I. *Be it enacted*, That from and after the first day of January, eighteen hundred and forty-two, it shall be the duty of all persons owning, chartering or acting as agents of any vessel or vessels trading or sailing from any of the ports within the limits of Georgia, to any other port or ports, not within the limits of Georgia, to give bond and security to the justices of the inferior court of the counties in which such ports may be, as often as, and whenever such vessel or vessels may depart from said ports, for the faithful observance, on the part of the captains, supercargoes and crews of such vessel or vessels, of the right of property claimed and exercised by the citizens of Georgia over their slaves, and to insure and indemnify said citizens from any and all losses incurred, in consequence of the abduction or escape of

their slave or slaves, by such vessel or vessels, which security shall (to be given aforesaid) be residents within the State of Georgia.

144. SEC. II. Whenever any ship or other vessel shall ply as a packet or regular trader from any port within the limits of Georgia, to any other port without said limits, then and in that case, it shall be lawful for the owner, charterer or agent, as the case may be, to give bond and security once annually, instead of giving such bond at each and every departure of said ship or other vessel.

Regular packets to give bond annually.

145. SEC. III. It shall and may be lawful for, and it is hereby declared to be the duty of said justices of the inferior courts, acting by themselves, or a majority of them, or by and through the clerk of the inferior court of said counties, to require and receive from the owner or owners, charterer or charterers, agent or agents of such vessel or vessels, a bond, with good and sufficient security, in the sum of one thousand dollars, for the purpose above-herein expressed; and which said bond shall be taken in the form following, the said justices or their clerks filling up the blanks with the names of the parties, their vessels, &c.

Inferior Court to receive the bond.

STATE OF GEORGIA, } Know all men, by these presents, that we  
County. } are held and firmly bound unto the Justices of the  
Inferior Court of County, for the time being, and their successors in  
office, in the just and full sum of one thousand dollars; for the true payment  
of which, we bind ourselves, our heirs, executors and administrators, jointly  
and severally, firmly by these presents, sealed with our seals and dated this  
day of 18

Form of the bond.

The condition of the above obligation is this—that whereas, the ship  
(or other vessel, as the case may be,) master, now in the port  
of , County of , is about to depart from said port to the  
port of , in the , and the above bound is  
owner, (or charterer or agent, as the case may be.) Now, if the said ship  
master, shall not, or doth not abduct, or take,  
conceal or carry away, contrary to the laws of Georgia, or be used or em-  
ployed, in concealing and carrying away, without the limits of Georgia, either  
knowingly or unknowingly, wilfully or unwilfully, any slave or slaves, the prop-  
erty of a citizen or citizens of the State of Georgia, whenever she departs  
from or leaves the said port, then the above obligation to be null and void;  
otherwise, to remain and be of full force and effect.

In witness whereof, we have hereunto set our hands and seals, this day and  
date above written.

[L. S.]  
[L. S.]

In presence of

146. SEC. IV. The bond or obligation so taken and executed, shall be  
and remain in the clerk's office of the inferior court of the county from  
which said vessel or vessels may or shall depart, for and during the space  
of four calendar months; and in the event that no complaint or information  
being given within said four months, of any probable violation or forfeiture  
of said bond or obligation, then, in that case said bond or obligation  
shall be given up to the party executing the same, or to his or their  
securities, to be cancelled and destroyed. But, if on the contrary, complaint  
and information be made within said time, by any citizen or citizens,  
setting forth the loss of his, her or their slave or slaves, in the way herein and  
before alluded to, and which said complaint and information shall be sworn to  
by the party or parties making the same, stating the name of the vessel and  
the time when such slave or slaves were supposed to be abducted, concealed  
or conveyed away, out of the State of Georgia, contrary to the laws of said  
State, and in violation of the rights of property, together with such other

Bond to re-  
main in office  
four months,  
and if no  
complaint be  
made, deliver-  
ed to the  
party execut-  
ing it.  
How com-  
plaint to be  
made.



probable or certain facts as the party or parties applying may reasonably expect to prove; then and in that event, the justices of the inferior court to whom such bond or obligation was made and executed, or the clerk of the court having the custody of the same, shall deliver said bond or obligation to the party applying, for the purpose of suit being instituted in the superior court of the county wherein such owner, charterer or agent, may reside. And it is hereby expressly declared, that suit shall be commenced in the name and style of the Justices of the Inferior Court of \_\_\_\_\_ County, for the use of \_\_\_\_\_ (naming the person who makes complaint and swears to the loss of his, her or their slave or slaves.)

147. SEC. V. In case more than one complaint and information be made, according to the terms and requisitions of the preceding section, against the same vessel, and for a violation or forfeiture of the same bond or obligation, [*a copy*] may and shall be made and certified to be a true copy, to each and every applicant; which copy shall be used and be as valid as the original, for all purposes involving the action or commencement of the suit at law.

148. SEC. VI. If any owner, charterer or agent of any vessel or vessels shall neglect or refuse to comply with the provisions of this act, as before recited and contemplated, he or they may be prosecuted before the superior court, in the county in which he or they shall reside, for a misdemeanor, and on conviction of the same, be sentenced to pay a fine at the discretion of the court, one-half to the prosecutor, the other half to be paid to the county. And the said owner, charterer or agent, shall be, moreover, made and held responsible for the loss of any slave or slaves so absconded, [*abducted,*] concealed and conveyed away out of the State of Georgia, (by any vessel or vessels, owned, chartered or controlled by the owner, charterer or agents thereof,) as fully and completely as if such owner, charterer or agents, had given bond and the same had been violated and forfeited, in terms of this act. And the party or parties injured and complaining is or are hereby authorized to proceed with his action at law, upon making the necessary complaint and information, as prescribed in section fourth of this act, to obtain satisfaction for such loss.

149. SEC. VII. No part of this act shall be held to affect steam-boats, or small craft, or other vessels, owned in the slave-holding States, plying between the ports within the limits of the State of Georgia and the ports of the adjoining slave-holding States, or the Territory of Florida.

150. SEC. VIII. If any vessel or craft shall depart from any port of this State, having any slave on board, who may be concealed, without the knowledge and consent of the master of said craft or vessel, and the said master of said vessel shall return said slave, without unnecessary delay or detention, to his or her owner, at the port from whence said vessel sailed, that then and in such case, the said bond shall not be forfeited.

AN ACT to provide for the method of collecting Rewards which may be offered for the apprehension of Run-away Slaves, who may hereafter be lodged within any of the Jails of this State.—*Approved Dec. 23, 1842.*

*Whereas*, in many cases in which rewards are offered for the apprehension of run-away slaves, and said slaves are lodged in jail, the same are discharged by the jailer from his custody, without the consent of the person so apprehending the slave, whereby the reward so offered becomes wholly lost to them; for remedy whereof—

151. SEC. I. *Be it enacted*, That from and after the passage of this act, when any run-away slave, for whom a reward has been offered by his owner, employer or any other person, shall be apprehended and lodged in

Jailer to retain runaway slave, until reward paid.



any of the jails of this State, it shall be the duty of the jailer, and he is hereby authorized to retain possession of said slave, until the reward so offered shall be paid, or good security given for the payment of the same.

152. SEC. II. If any jailer shall discharge a slave so apprehended, without collecting the reward so offered, or taking good security, in accordance with the foregoing section of this act, and by such refusal or neglect, the said reward shall be lost to the person so apprehending the said slave, such jailer and his securities, shall be liable in an action at common law, for the amount so lost by the refusal or neglect of the jailer to comply with the provisions of this act: *Provided*, the individual so apprehending the said run-away slave, shall at the time of lodging said slave in jail, give written notice to the jailer of the amount of the reward offered, and the name of the person offering the same.

Jailer discharging, after notice, liable for the amount of the reward.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Notice to the Jailer by the Taker-up.*

STATE OF GEORGIA, } *To John Smith, Jailer of said County.*  
Houston County. } You are hereby notified that *Richard Roe*, has offered a reward of *fifty* dollars, for the apprehension of the *man* slave *Jacob*, by me taken up and turned over, *this day*, to your custody; therefore, you are hereby required to collect and receive the said reward, (and other charges allowed me by law,) before the discharge, from your custody, of said slave. This *May 1*, 1859.

JOHN DOE, *Taker-up.*

AN ACT to amend the several laws now in force in relation to Free Persons of Color; and to exonerate and discharge certain Free Persons of Color from all pains, penalties and forfeitures heretofore incurred, and to which they are subject and liable.—*Approved Dec. 22, 1843.*

153. SEC. I. *Be it enacted*, That all free persons of color who have resided in this State from the first day of June, in the year eighteen hundred and thirty-six, and who have failed to have their names registered, in conformity to law, shall be and they are hereby declared to be exonerated and discharged from all pains, penalties and forfeitures to which they were thereby subjected: *Provided*, that this act shall not extend to any case where there has been a prosecution and conviction thereon: *Provided*, that this act shall not operate in favor of any free negro of the age of fourteen years, unless he or she, shall on or before the first day of August next, and once a year, in each year thereafter, have his or her name registered, in compliance with the statutes of this State.—[See 175.]

Defaulting free persons of color relieved under certain conditions.

154. SEC. II. Free persons of color under the age of fourteen years, shall not be subject to the pains and penalties of the laws against free persons of color, neglecting and omitting to have their names registered: *Provided*, that this act shall not be construed to authorize any free negro under the age of fourteen years, or other age, to come into this State.

Under fourteen, not subject to the penalties.

155. SEC. III. If any free negro of the age of fourteen years, shall hereafter neglect to have his or her name registered, agreeably to law, he or she shall not be compelled to depart this State, but shall, nevertheless, be subject to be arrested, tried, convicted and fined, and be compelled to pay the same, agreeably to the provisions of the second section of an act approved December the twenty-sixth, eighteen hundred and thirty-five, until he or she shall have caused his or her name to be registered, agreeably to the laws of this State.

Further neglect to register, how punished.

SEC. IV. All laws or parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to repeal all laws respecting the importation of Slaves into this State; and to give certain powers to Municipal Corporations, in relation to Slaves. [*The first section of this act was repealed by the act of Jan. 22, 1852, and again revived by the act of March 4, 1856; by which the act of 1852 was repealed.*—*Approved, Dec. 19, 1849.*

Restrictions  
on importa-  
tion of slaves  
removed.

156. SEC. I. *Be it enacted*, That from and after the passage of this act, all laws or parts of laws, civil and criminal, forbidding or in any manner restricting the importation of slaves into this State, from any other slave-holding State of this Union, be and the same are hereby repealed.—[*See 183 and 184.*]

Power of regu-  
lating in cities  
and towns.

157. SEC. II. It shall be lawful for the corporate authorities of any city or town in this State, by ordinance, to regulate the sale of slaves by traders, within their limits, (except sales at public outcry, at the places of public sales, fixed by law,) and to prescribe the places, within their jurisdiction, in which marts for the sale of slaves, and slaves for sale by traders, shall be kept, with authority to enforce such ordinances.

AN ACT to alter and amend an act approved Dec. 22d, 1832, which requires the Jailers of the several counties of this State, to advertise and publish all run-away Slaves, in one of the papers of Milledgeville.—*Approved Feb. 1, 1850.*

In what  
papers run-  
away slave to  
be advertised  
by Jailer.

158. SEC. I. *Be it enacted*, That from and after the passage of this act, the jailers of the several counties in this State, shall not be required by law, as heretofore, to publish or advertise any run-away slave or slaves, in either or any of the Milledgeville papers; but in lieu thereof, the said jailers shall be and they are hereby required, in every instance, to advertise such run-away slave or slaves in such paper or papers, as they may direct or think proper: *Provided*, one of such papers shall always be the same in which the sheriff or coroner of the jailer's county, shall at the time, advertise the sheriffs' sales of such county.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to provide for the trial by the Superior Courts of this State, of any Slave or Slaves or Free Person of Color, charged with any capital offence, against the Laws of this State.—*Approved Feb. 14, 1850.*

Justices of the  
Peace, in capi-  
tal cases, to  
commit the  
accused, and  
return the  
papers of the  
case to the  
sol. gen.

159. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever it shall appear, after investigation, to the justices of the peace before whom any slave or free person of color, shall be put upon trial, for any offence against the laws of this State, that the said slave or free person of color has committed a capital offence, such slave or free person of color shall be immediately committed to the jail of the county wherein such offence was committed, if sufficiently secure, and if otherwise, to the nearest secure county-jail. And the justices before whom such examination shall have taken place, shall reduce their opinion to writing, and transmit the same, together with the report in writing, of the evidence taken before them on such examination, and all other papers appertaining to said charge, to the attorney or solicitor-general, being the prosecuting officer in the superior court of said county, on the first day of the next term of said court.

Duty of sol.  
gen.

160. SEC. II. Upon receiving the papers in any such case, as provided in the preceding section, it shall be the duty of such attorney or solicitor-general, to frame and send before the grand-jury, a bill of indictment against the person or persons so charged, as in cases of free white persons. And it shall and may be lawful for the grand-jury in any county of this State, to present to the superior court of such county, any capital offence, committed by any slave or free

Duty of Grand  
Jury.



person of color, within said county, after the passage of this act. And in any case wherein a slave or free person of color shall have been committed and a return made of the papers to the attorney or solicitor-general, as provided in the first section of this act, if there shall be no prosecutor bound or appearing to prosecute the case, it shall be the duty of the attorney or solicitor-general to place before the grand-jury, such charge made by such justices of the peace, together with all legal testimony sustaining [*the charge,*] which may be accessible to him; and the said grand-jury may upon such evidence, in their discretion, present such offence to the court. And all persons who may now be competent witnesses by law, upon the trial of slaves and free persons of color, shall be competent witnesses before the grand-jury, and upon the trial in the superior court.—[*See 9, and 59.*]

What may be done where there is no prosecutor.

Who may be witnesses.

161. SEC. III. After a bill of indictment found true, or presentment made, as herein-before provided, the trial shall proceed to rendition of verdict, in conformity with the provisions of the penal code of this State. And in case of conviction, the judge of the superior court, before whom such trial shall have been had, shall pass sentence, in conformity with the laws now in force, imposing penalties and providing for the passing of sentence in such cases. And all laws now of force, regulating the subject-matter of this act and not inconsistent with its provisions, nor with the said fourteenth section of the penal code, shall continue in full force; and that, all laws and parts of laws, conflicting therewith, be and the same are hereby repealed.

Trial how conducted.

Judge to pass sentence.

AN ACT to compel all persons taking up run-away slaves, to deliver them to the Jailer of the County where taken up; and to prohibit said persons from detaining in their custody, such run-away Slave or Slaves, for a longer time than four days; and [*for*] other purposes therein mentioned.—*Approved Feb. 22, 1850.*

162. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, it shall be the duty of each and all persons in this State taking up any run-away slave or slaves, when the owner or owners of the same is or are unknown, to deliver the same to the jailer of the county where taken up, within four days, at least, next after such taking up: (*Provided*, such slave shall not escape from custody;) and that on failure or refusal to do so, such person or persons so offending, shall be guilty of a high misdemeanor, and upon indictment, trial and conviction therefor, shall be fined in a sum not exceeding fifty dollars, or imprisoned in the common jail of the county, for any time not exceeding three months, or both, at the discretion of the court. And the person so arresting and delivering to the jailer of any county, any run-away slave or slaves, shall be entitled to five dollars for each slave so delivered up, the same to be paid over to the jailer, by the owner of said slave or slaves, his or her agent, when said slave or slaves are delivered up, the same to be paid over to the person so arresting and delivering up as aforesaid.

Person taking up run-away slave, to deliver him to the Jailer within four days, or punished with fine and imprisonment.

Fee allowed for taking up.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to alter and amend the twelfth section of the thirteenth Division of the Penal Code of this State, and for other purposes therein contained.—*Approved Jan. 1. 1851.*—(1852.)

165. SEC. I. *Be it enacted*, That the twelfth section of the thirteenth division of the penal code of this State, be and the same is hereby so altered and amended, as to read as follows, to wit: "Any owner, overseer or employer of a slave or slaves, who shall cruelly treat such slave or slaves, by unnecessary and excessive whipping, beating, cutting or wounding, or by cruelly and

Cruel treatment of slaves, how punished.



unnecessarily biting or tearing with dogs; by withholding proper food and sustenance; by requiring greater labor from such slave or slaves, than he, she or they are able to perform; or, by not affording proper clothing for such slave or slaves, whereby the health of such slave or slaves may be injured and impaired, or cause or permit the same to be done, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court."

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to protect the citizens of this State, from danger, by the running-at-large of Lunatic and Insane Slaves, or Free Persons of Color.—*Approved Jan. 17, 1852.*

Insane person of color, at large, may be arrested by warrant.

166. SEC. I. *Be it enacted*, That upon the application of any person, under oath, setting forth that any insane or lunatic slave, or free person of color, is running-at-large, and is a public nuisance, or dangerous to the public, the justices of the inferior court of the county, shall issue a warrant, directed to the sheriff, deputy-sheriff, or any constable of said county, requiring him to bring such slave or free person of color before them.

And committed to jail.

167. SEC. II. That it shall be the duty of said inferior court, as soon as possible after said arrest, to examine, in a summary manner, into the facts of the case, and if it shall appear that such slave or free person of color, in truth is a public nuisance, or that his or her running-at-large, is dangerous to the community, they shall forthwith, commit him or her to the common jail of the county: *Provided*, that five days' notice of said trial is given to the owner or guardian, of said slave or free person of color.

Owner or guardian must have notice. Costs, by whom payable and how collected.

168. SEC. III. That when any slave shall be committed to jail, by and under the second section of this act, it shall be at the cost of the owner of said slave. And the justices aforesaid, shall in their order of commitments, give judgment against the owner, for the cost of the proceedings; to be collected by execution, in the name of the officers of court, against the said owner. And in case the same shall be a free person of color, then the cost thereof shall be paid out of any property that the guardian of said free person of color may hold as such guardian, for which a *fi. fa.* may issue; and on a return of "no property," shall be paid by the inferior court of said county.

Fees for keeping allowed to Jailer.

How collect'd.

169. SEC. IV. That the sheriff or jailer of the county shall be allowed at the rate of four dollars per month, for the keeping of such slave or free person of color, and at the end of each and every month the clerk of the inferior court, may on the application of said sheriff or jailer, under oath, stating that said fee for dieting such slave is not paid, issue an execution against the owner of said slave, for the amount due, in the name of the jailer or sheriff, and upon the return of said execution unsatisfied, the inferior court shall pay the same out of the county [*funds.*]

On giving bond and security, the owner may have the care of the slave.

170. SEC. V. That at the hearing or after commitment, the owner of such slave may take him or her into his own possession or custody, by entering into a bond or recognizance with security, in the sum of five hundred dollars; conditioned that such slave shall be kept in close and safe custody; which bond shall be payable to the justices of the inferior court of the county, and shall on its breach, be forfeited and recovered by *scire facias* and judgment, in the inferior court.

AN ACT to regulate the sale and division of Slaves, in certain cases therein named.—*Approved Feb. 18, 1854.*

171. SEC. I. *Be it enacted*, That the children, not exceeding five years,



of any woman slave, and such woman slave, shall not be separately sold, or exposed to sale, by any executor, administrator, guardian or other trustee; nor shall they be separated in any division made by any executor, administrator, guardian or other trustee, but shall be placed together in one of the parts into which the estate to which they belong, is to be divided, unless such division cannot in any wise be effected without such separation.

Slave mother and child under five y'rs not to be separated.

172. SEC. II. That by consent of the ordinary, slaves, being in a different county from a deceased owner, may be sold in the county in which said slaves may be, upon application being made for such purpose.

Slav's in other counties may be sold there.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the benefit of Free Persons of Color subject to taxation.—  
*Approved Feb. 18, 1854.*

173. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, that it shall be the duty of all free persons of color in this State, who are subject to taxation, to register their names as such annually, in the county where their guardian resides; and in case of their absence, it shall be the duty of their guardians, to register for them.

Free persons of color to register in the county of guardian's residence.

174. SEC. II. That it shall be the duty of the clerk, to furnish each free person of color, (after having registered himself as such,) a written certificate of the same, officially signed; and the production of such certificate, shall be sufficient evidence to relieve such free person of color from any charge that may be preferred against him for neglect or refusal to register himself in any other county than the one in which his guardian may reside.

Clerk to give written certificate of registry, which shall obviate the necessity of registry in other county.

SEC. III. That all laws or parts of laws repugnant to this act, be and the same are hereby repealed.

AN ACT to amend the several laws now in force in relation to Free Persons of color, and to exonerate and discharge certain Free Persons of Color from all pains, penalties and forfeitures heretofore incurred and to which they are subject and liable.—*Approved Feb. 16, 1854.*

175. SEC. I. *Be it enacted*, That all free persons of color who were residing in this State on the first day of January, eighteen hundred and forty-nine, and have been since that time to the present, residents of said State, and who have failed to have their names registered, in conformity to law, shall be and they are hereby declared to be exonerated and discharged from all pains, penalties and forfeitures, to which they were thereby subjected: *Provided*, that this act shall not operate in favor of any free negro of the age of fourteen, unless he or she, shall on or before the first day of July next, and once a year, in each year thereafter, have his, her or their name registered, in compliance with the statutes of this State.

Certain free persons of color exempt from penalties, etc.

In whose favor this statute not to operate.

176. SEC. II. That if any free negro of the age of fourteen years, shall hereafter neglect to have his or her name registered, agreeably to law, he or she shall not be compelled to depart this State, but shall, nevertheless, be subject to be arrested, tried, convicted and fined, and be compelled to pay the same, agreeably to the provisions of the second section of an act approved December the twenty-sixth, eighteen hundred and thirty-five, until he or she shall have caused his or her name to be registered, agreeably to the laws of this State.

Certain defaulters how punished.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.



AN ACT to authorize the Justices of the Inferior Courts of this State, to bind out any Free-Negro, Mulatto, or Free Person of Color, between the ages of five and twenty-one years.—*Approved Feb. 16, 1854.*

Certain free children of color to be bound out.

177. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be the duty of the inferior courts of the several counties in this State, to bind out to some fit and proper person, all free negroes, or other free persons of color, between the ages of five and twenty-one years, upon its appearing to the court, upon the evidence of two or more respectable persons, that such free negroes, or persons of color, are not being raised in a becoming and proper manner. And upon the persons to whom said negroes, or free persons of color, are bound, giving bond and sufficient security to said court for their good treatment, and not to move them out of the limits of this State, and to discharge them from his or her service at the age of twenty-one years.

Person to whom bound to give bond and security.

Master selling apprentices, how punished.

178. SEC. II. That if any person or persons to whom such negro or negroes, or other free person of color is bound, shall sell or cause to be sold into slavery, such negro or free person of color, he, she or they shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the penitentiary, at hard labor, for a term of years, not more than six nor less than two years, as the court may direct.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to change the laws now in force in this State, relating to the arrival within the limits of this State of Colored Seamen.—*Approved Feb. 7, 1854*

*Whereas*, the interests of commerce require an alteration and modification of the laws now of force, relating to the arrival of colored seamen within the limits of this State—

Certain portions of the act of 1829, [see Quarantine and Health] repealed.

179. SEC. I. *Be it enacted*, That so much and such parts of the laws of this State, as require ships or vessels coming into this State by sea, having on board any free negro, or free person of color, employed as a steward, mariner, or in any other capacity, or as a passenger, to be subject to a quarantine of forty days, be and the same are hereby repealed.

What the master of a vessel having persons of color on board, must do, upon arriving in this State.

180. SEC. II. That it shall be the duty of the master, or owner, of every steam-boat, steam-ship, or vessel of any description, arriving in this State, from any port whatever, (except from ports in South-Carolina and Florida,) immediately upon his arrival at any port in this State, to report to the mayor or other chief-magistrate, or competent authority, at the place of arrival, the name, age, description and capacity of every free person of color, descended from negroes or mulattoes, employed on board his vessel; and to obtain a passport from such authority to permit such person of color to land; it being within the discretion of such mayor or other authority, to grant or refuse said passport.

Person of color violating this act, to be imprisoned. Master and owner subject to penalty of \$1000.

181. SEC. III. That in case a free person of color, so descended as aforesaid, so arriving as aforesaid, shall be found on shore without such passport, or in contravention of the laws of this State, he shall be imprisoned until the departure of said vessel. And the master and owners of such vessel, shall become jointly and severally responsible, in the sum of one thousand dollars, for each [of] such free persons of color, to be recovered in any court in this State, at the instance of such mayor or other authority.

This act applies only to incorporated places.

182. SEC. IV. That no part of this act shall apply to or be of force, in any port or place within the limits of this State, where there is no municipal corporation, or intendant, or public chief-magistrate, or authority; but, in all such places, the laws at this day of force, shall stand unaltered and unrepealed.

SEC. V. That all laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to repeal an act, approved 22d January, 1852, entitled "an act to repeal the first section of an act approved 19th December, 1849, entitled an act to repeal all laws respecting the importation of Slaves into this State, and to give certain powers to municipal corporations in relation to Slaves;" and to amend the act hereby revived; and to revive and continue in force, the said first section of said act so repealed.—*Approved March 4, 1856.*

183. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, the act approved 22d January, 1852, entitled "an act to repeal the first section of an act, approved 19th December, 1849, entitled an act to repeal all laws respecting the importation of slaves into this State; and to give certain powers to municipal corporations, in relation to slaves; and to amend the act hereby revived," be and the same is hereby repealed.

Act of 1852  
repealed.

184. SEC. II. That from and after the passage of this act, the first section of the act approved 19th December, 1849, entitled "an act to repeal all laws respecting the importation of slaves into this State; and to give certain powers to municipal corporations, in relation to slaves, be and the same is hereby revived and declared to be in full force.

Act of 1849  
revived.

SEC. III. [Repeals all conflicting laws.]

## CHAPTER XXXV.

### TAX.

AN ACT to point out the mode of electing a Receiver of Returns of Taxable Property, and Tax-Collector, for the several Counties of this State.—*Approved Dec. 15, 1810.*

1. SEC. I. On the first Monday in January, annually, the electors in the several counties in this State, entitled to vote at the general elections, be and they are hereby authorized and required to elect, by ballot, at the court-houses of the respective counties, a receiver of returns of taxable property, and tax-collector, for each county in this State. Which said election shall be held under the direction of three justices of the peace, who shall transmit all returns of said elections, to the governor for the time being, in twenty days, who shall commission such person or persons so elected.

Election of  
Receivers and  
Collectors.

NOTE.—By the Act of 1830, see title Elections, it is provided that "one Justice of the Inferior Court, or one Justice of the Peace and two Freeholders, or two of the aforesaid Justices and one Freeholder, shall superintend the Elections," which may be held. And by the Act of Feb. 11, 1850, it is further provided, that "it shall be lawful for three Freeholders to manage any Election which may be held (in such District,) in case there is no Justice of the Inferior Court, or Justice of the Peace, present. And in any such case, either of such Freeholders, shall be authorized to administer any oath which it is necessary to administer for the purpose of such Election." The Freeholders may administer the Oath to each Other. For the Oaths, see title Elections.

AN ACT to raise a Tax for the support of Government for the year 1805.—*Approved Dec. 12, 1804.*

2. SEC. III. There shall be a receiver for each county throughout this State, and the mode of taking the returns shall be as follows—the receiver for each County; his duty.



of tax-returns, in each county, shall give notice to [*in*] each captain's district within the county, by advertising in the most public place, of each district, the day and place he will attend, to receive the returns of taxable property therefor; and which notice shall be given at least ten [*see 38,*] days previous thereto, [*and see 32.*] Such receiver shall, likewise, attend previous to making his return of defaulters, three different days in each district, for that purpose, which days shall not be within seven days of each other. [Clause here relating to Captain giving in list of tax-payers, [*see 57.*]

Must receive  
returns until  
he makes out  
Digest.

And it shall be the duty of the receiver of returns, at all times, upon personal application, to receive the returns not given in at the time and place specially notified, at any time before he makes a digest of the whole returns. And he shall, previous to entering on the execution of his duty, take and subscribe an oath or affirmation, in the words following, to wit: "I, A B, do solemnly swear, (or affirm.) that I will truly and faithfully perform the duties of Receiver of returns of taxable property, in the county to which I am appointed, as required of me by this act; and will not receive any return but on oath or affirmation."—[*Oath enlarged. See 136.*]

Oath of Re-  
ceiver of Tax-  
Returns.

Receiver how  
paid.

3. SEC. IV. And the said several receivers to be appointed by this act, shall be paid by the collectors in the respective counties, the sums which shall become due them for their services, as allowed by this act.—[*See 67.*]

Subject to the  
order of the  
Governor.

Collector to  
give Bond and  
take an oath.

4. SEC. V. The receivers of tax-returns and collectors of taxes, of the respective counties, shall be responsible to the executive department, and be amenable to such rules in conducting the duties of their respective offices, as the executive may think necessary and proper. The collectors of the respective counties, before they enter on the duties of their office, shall give bond with sufficient securities; and shall also take and subscribe the following oath or affirmation, to wit: [*Oath superseded. See 124.*] [*The collectors*] shall attend in each district of the county to receive such tax; and shall previously give at least ten days' notice thereof; and shall attend at least two days in each captain's district, and not within ten days of each other. And if he shall presume to execute the said office, without the qualification aforesaid, he shall forfeit double the sum for each person's tax he shall receive; to be recovered by any person who shall inform and prosecute for the same, in any court or tribunal having cognizance of debts to that amount.—[*Manner of giving in, see 86.*]

How often  
must attend  
in each Cap-  
tain's District.  
Penalty on  
Collector for  
acting ille-  
gally.

How and  
when Bond  
and security  
must be given  
by Collector.

5. SEC. VI. The governor for the time being, shall take bond and security of the collectors of each county respectively, in conformity to this act, for the due performance of all the duties required of them; and shall transmit a *dedimus* to the justices of the inferior courts of the several counties, or any two of them, to receive and cause to be executed such bond with two or more securities; to be approved by such justices; which bond shall be forthwith transmitted by them to the executive office.—[*See 53.*]

Attorney, etc.  
of non-resi-  
dents to pay  
tax out of  
their own  
estate, after  
having given  
in for such  
non-resident;  
but may make  
oath of re-  
nunciation.

7. SEC. IX. All attorneys or trustees of or for any person or persons, living without the limits of this State, shall make true returns, as aforesaid, within the district wherein such trustee, attorney or agent resides, [*see 16;*] and that such attorney or attorneys, trustee or trustees, shall be subject and liable to pay the tax to become due by this act, or which may be due by any former tax-law or laws, for such land or lands, slave or slaves, out of his, her or their own proper estate, notwithstanding such attorney or attorneys, trustee or trustees, may renounce or disclaim acting as such before the said taxes are levied; unless such attorney or attorneys, trustee or trustees, shall make oath before the receiver aforesaid, that he or they hath or have renounced such trust or attorneyship, before the payment of



such tax became due, without having done it with a design to avoid the payment thereof: *Provided always*, that if such attorney or attorneys, trustee or trustees, shall within one year next after making such oath, again become attorney or attorneys, trustee or trustees, or act as such, he or they shall be liable to pay the said tax as herein directed; any thing herein contained, to the contrary notwithstanding. And for levying whereof, the same remedy shall be and is hereby given, as for levying the tax to become due by virtue of this act, on the proper estate or estates of such attorney or attorneys, trustee or trustees, or other person or persons, acting as such.

But should they assume such character within a year, then they are liable.

8. SEC. XIV. The taxes imposed by this act shall be preferred to all securities and incumbrances whatever. And in case any person or persons coming under the notice of this act, shall die between the time of giving in his, her or their returns, to the receiver or receivers, respectively, and the paying of his, her or their tax; and any goods or chattels of the deceased, to the value of the sum taxed, shall come into the hands of his, her or their executors or administrators, or executors in their own wrong, such executors or administrators shall pay the same, by the time before limited; prior to all judgments, mortgages or debts whatsoever, otherwise a warrant of execution shall issue against the proper goods and chattels of such executor or administrator. And if any person or persons, between the time of rendering the account of his, her or their estate to the receiver aforesaid, and the time of his, her or their paying in the said tax, shall be about to depart the county in which he, she or they may have, immediately then preceding resided, the said collector or collectors is, and they are hereby directed and required forthwith, to levy the same, notwithstanding the day of payment may not then have arrived, unless such person or persons, shall and do find security, (to be approved of by the said collector or collectors, respectively,) for the payment thereof, at the day herein appointed.

Taxes to be preferred. Persons giving in and dying before paying tax, executor or administrator must pay.

Where persons are about to remove after giving in, what must be done.

9. SEC. XV. All deeds of gift, conveyances, mortgages, sales and assignments of goods, lands, tenements and chattels, of any kind, of any person whatsoever, made with an intention to avoid paying the aforesaid taxes, are hereby deemed and declared null and void. And in case any person who has mortgaged estate, real or personal, shall neglect or refuse to pay the tax of the same, the mortgagee shall be liable to pay the same: *Provided*, that no such sale for taxes under this act, shall tend to affect the State's title to any property mortgaged or secured thereto.

Conveyances to avoid the payment of taxes, void. Mortgagee to pay taxes, should Mortgagor fail to do it.

10. SEC. XVIII. Every person or persons refusing or neglecting to give in a list of his, her or their taxable property, agreeably to the directions of this act, shall forfeit and pay for every such neglect, the sum of one dollar for every free male above the age of twenty-one years; and the sum of one dollar for every negro; the sum of eighty cents on every hundred dollars value of every lot, wharf or other lands, not herein already enumerated; and on all buildings within the limits of any town, village or borough, within the same. To be paid by the master or owner thereof, and to be recovered by bill, plaint or information, before any court of record; the one-half thereof to go to the informer, and the other half to the use of the county where such information is made, [except where the prosecution is carried on by presentment, and in that case, the whole shall be applied to the use of the county—*repealed*, see 21: *Provided always*, that such information, or presentment, be made within twelve months after such neglect or default.]

Penalty on persons refusing or neglecting to give in their taxable property. How penalty to be recov'd.

Limitation of action.

NOTE.—There is no subject embraced in the laws, which is in more confusion, and consequent uncertainty, than the Tax Laws. Sometimes it is easy to determine upon the old



law, whether it be in force or be repealed ; but in many instances, it is hard, almost impossible, to arrive at a satisfactory conclusion, on the point, (no general rule can be laid down and followed, on the subject.) Of the latter kind, is the XVIIIth section of the Act of 1804. So many provisions of subsequent Acts, are, apparently, in conflict with this, that it becomes questionable whether the whole section is not repealed.—See 64, etc.

*And whereas*, divers persons, non-residents of this State, import large quantities of goods, wares and merchandize, and evade the payment of taxes by not being in this State at the time usually prescribed for making returns for taxes ; for remedy whereof—

Non-residents bringing goods, etc. into this State, must pay tax. Such goods not liable in the hands of vendue-master. 11. SEC. XIX. *Be it enacted*, That any non-resident who shall expose for sale any goods, in this State, shall on his arrival, or within seven days after entering the same, make returns, on oath, to the receiver of tax-returns, and give security to the tax-collector to pay the same, on or before the time prescribed for paying the taxes imposed by this act : *Provided*, that such goods shall not be liable to pay the tax when they may be exported, or placed in the hands of a vendue-master, to be actually disposed of by him or them. And on failing to comply, as aforesaid, it shall and may be lawful for the tax-collector to proceed against him or them, in like manner as against persons about to remove out of the county.

Defaulter may give in to the Clerk Inferior Court. Clerk's fee. His duty as to return. 12. SEC. XX. Where any person or persons, who may be a defaulter, shall go to the clerk of the superior court [*inferior court—see 18,*] of his county, and give in a list of his property, upon oath, in the same manner as ought to have been given to the receiver, such person or persons shall be exonerated from the pains and penalties of this act ; and each person shall pay to such clerk, for taking such list, the sum of fifty cents. And every such clerk shall return to the collector of his county, on or before the [first day of December, 1805 ; *annually,*] a true list of such property ; and also, transmit to the treasurer a return thereof, on or before the [first day of February following—*See 18.*]

No judicial interference allowed. 13. SEC. XXI. And no replevin shall lie, or any judicial interference be had, in any levy or distress for taxes, under this law, but that the party injured be left to his own proper remedy, in any court of law.

Penalty on Receiver for making false return. Penalty on Collector for demanding more than he is allowed by law. Sheriffs must obey process from Treasurer. 14. SEC. XXIII. Any receiver making a false return, expressive of more, or other, than is to him given in, shall forfeit and pay to the party aggrieved, a sum equal to double the amount of the taxes on the property so illegally returned. And any collector demanding any other or more tax than by this act is imposed, according to the respective returns, shall forfeit and pay to the party aggrieved, for every such offence, four-fold on the sum so unlawfully received ; to be recovered before any jurisdiction having cognizance thereof. And it shall be the duty of the sheriffs of the respective counties, to execute all executions and other process, issued by the treasurer against officers appointed by this act, under and by virtue of the same.

Sheriff to give possession of property sold, and dispossess by force the person in possession. 15. SEC. XXVIII. It shall be the duty of the sheriffs, of the respective counties of this State, and they are hereby authorized and required, when a sale shall have taken place under and by virtue of an execution issued by the treasurer of the State, under the directions of this act, against any defaulting tax-collector, and the property of such defaulting tax-collector shall have been sold for moneys due the State, to deliver the possession of the property so sold, to the purchaser or purchasers thereof. And if the said defaulter, or any other person or persons who may be in possession of the said property so sold, shall refuse to deliver up the same, upon being called on by the sheriff of the county for that purpose, it shall be the duty of such sheriff, and he is hereby required, to dispossess the said defaulting



tax-collector, or any other person or persons who may be in possession of the property sold, and deliver the same to the purchaser or purchasers thereof, their agent or attorney; for which purpose, if needful, he shall call on the commanding officer of the militia of the county, where the property is situated, to render the necessary assistance, who is hereby required to order out the same.—[See 17.]

16. SEC. XXIX. It shall be lawful for any agent to return any property to the receiver of tax-returns, and pay the taxes due thereon to the tax-collector of the county in which such agent resides.

17. SEC. XXX. It shall be the duty of the sheriffs, in each county, to receive from the tax-collector therein, all executions that may be tendered to him for taxes, and to levy and collect the same, and to make due returns to the said collector, within [thirty days] after the receipt of each execution, where personal property is levied on, and where it shall be real estate, [sixty days.] For which the said sheriff shall receive such pay as by law is directed in cases of tax-collector's executions, levies and sales; and in case of default or neglect of duty, the justices of each inferior court, shall from time to time, on the application of the tax-collector, make such rules and regulations as shall cause a due execution of the collection of the general and county tax, in each county, as aforesaid.

Agent may give in returns and pay tax.

Sheriffs must collect Tax-Collectors' Executions.

Inferior Court to establish necessary rules.

### *Receiver of Tax-Returns' Notice.*

STATE OF GEORGIA, } The undersigned, Receiver of Tax-Returns, in  
Houston County. } and for said County, will attend, at *Perry*, (619th District, G. M.) on the *twelfth* day of the present month, (*May*), for the purpose of receiving the Returns of taxable property, for the present year. This *May* 1, 1859.

JAMES TAYLOR, R. T. R.

NOTE.—The above notice must be given, at least ten days previous to the day of taking in Returns. "Such Receiver, shall likewise attend, previous to making his Return of Defaulters, three different days in each District for that purpose, which days shall not be within seven days of each other." A new and distinct notice of the time of attending, subsequently, must be given by the Receiver.

"It is the duty of the Receiver of Returns, at all times, upon personal application, to receive the Returns not given in at the time and place specially notified, at any time before he makes a Digest of the whole Returns." And, within the same time, Returns may be made to the Clerk of the Inferior Court.

### *Tax-Collector's Bond.*

STATE OF GEORGIA, } We, *Edward Marshall* as principal, and *Richard*  
Houston County. } *Roe* and *Charles Smith* as securities, all of the  
County and State aforesaid, acknowledge ourselves held and bound unto his Excellency *Joseph E. Brown*, Governor of said State for the time being, and his successors in office, in the sum of *ten thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, the above bound *Edward Marshall*, has been duly elected Tax-Collector of the County aforesaid, for the year eighteen hundred and *fifty-nine*: now, should the said *Edward Marshall*, well and truly do and perform, all and singular, the duties required of him by law as Tax-Collector,



as aforesaid, then the above obligation to be void, otherwise, of force.  
This *January 5, 1859.*

Approved—

JOHN RAGIN, J. I. C.	}	EDWARD MARSHALL, <i>Prin'l.</i> [L. S.]
JOHN D. WINN, J. I. C.		RICHARD ROE, <i>Sec'ty.</i> [L. S.]
W'M F. POSTELL, J. I. C.		CHARLES SMITH, <i>Sec'ty.</i> [L. S.]

NOTE.—The Tax-Collector's Bond “shall be taken for, at least, double the amount of the Tax of the County.” Which Bond “shall be recorded in the Clerk's Office of the Inferior Court.” [But see 110.]

### *Collector's Notice to Tax-Payers.*

STATE OF GEORGIA, } The undersigned, Tax-Collector of said County,  
Houston County. } will attend at *Perry*, (619th District, G. M.) on  
the *tenth* day of the present month, (*June*), for the purpose of receiv-  
ing the Taxes due in said District. This *May 20, 1859.*

EDWARD MARSHALL, T. C.

NOTE.—The Collector must “give at least, ten days' notice of the time and place of meeting.” He “shall attend, at least, two days in each Captain's District, and not within ten days of each other,” for the purpose of receiving Taxes.

### *Comptroller-General's fi. fa. against defaulting Collector.*

STATE OF GEORGIA, } By *Peterson Thweatt*, Comptroller-General of  
Baldwin County. } said State.

*To all and singular, the Sheriffs of said State.*

Whereas, *Jefferson Baskin*, Tax-Collector of the County of *Houston*, for the year eighteen hundred and *fifty-eight*, fails to make settlement of the Taxes due the State, and to pay into the Treasury the amount of said Taxes, the same being the sum of *five hundred* dollars: now, therefore, you and each of you, are hereby commanded, that of the goods and chattels, lands and tenements, of said *Jefferson Baskin*, Tax-Collector of said County, (and his securities *Richard Roe*, and *Charles Smith*,) you cause to be made, by levy and sale, the aforesaid sum of *five hundred* dollars, with the sum of twenty per cent. per annum on the principal sum, from the first day of December last, as interest. And have you, at the *Superior* Court, to be held in and for said County of *Houston*, on the *fourth* Monday in *April* next, said sums of money and this writ, with your actings and doings thereon. *Given under my hand and official signature, this May 1st, 1859.*

PETERSON THWEATT, *Com. Gen.*

NOTE.—By the Act of 1823, it is made the duty of the Sheriff to account to the Attorney or Solicitor-General of the Circuit, “within three months,” otherwise he is liable to pay twenty per cent. per annum, on the amount collected. For the sheriff's compensation, in these cases, see Act of 1814, of this Title.

AN ACT to continue in force the foregoing.—*Approved Dec. 4, 1805.*

18. SEC. II. Clerks of the superior courts shall not be at liberty to receive any return of taxable property, as directed in the before-recited act, but it shall be the duty of the clerks of the inferior courts, in the different counties, at any time, before a digest of the taxes shall be completed, and not after, on application, on oath, which shall be the same, and adminis-

Clerk of the  
Inferior Court  
to receive Re-  
turns.

tered by said clerk, as pointed out in the act aforesaid, [see 129.] And shall keep a regular list of the names and property of the person or persons so giving in, and by him to be returned in the digest deposited in his office; and a certified copy to the receiver of tax-returns, by him to be entered in the books to be put in the hands of the collector, and deposited in the comptroller's office. Clerk's duty herein.

AN ACT to impose a tax for the support of Government for the year 1808.

—*Approved Dec. 10, 1807.*

19. SEC. I. *Be it enacted*, That the act to raise a tax for the support of government for the year 1805, (with the amendments herein-after expressed,) be and the same is hereby declared to be in force, until the meeting of the next General-Assembly, and from thence, till the same is repealed. Act of 1804 perpetuated.

20. SEC. VI. That in all cases where any stallion, or covering-horse, shall be sent into this State to be let to mares, by citizens or persons resident without the limits of this State, it shall and may be lawful for, and it is hereby declared to be the duty of the tax-collector of the county where such stallion or covering-horse shall be let to mares, to levy and collect the said tax, at any time after the commencement of the season, and before the close of the same.—[The amount of the Tax imposed, is “a tax equal to the season, or price of one mare, let to such stallion, or covering-horse.”] Tax on Stallions from other States.

21. SEC. XI. So much of the above-recited act as relates to defaulters, failing to make their returns, being presented by the grand-jury, be and the same is hereby repealed. Amount of Tax.  
Repeals part of the act of 1804.

AN ACT supplemental to the several Tax-Laws.—*Approved Dec. 22, 1808.*

22. SEC. I. In all cases where the owners of taxable property shall be in default for one or more years, and such property hath not been seized or sold, it shall be lawful for the owner or owners thereof, his, her or their agent or attorney, to make return thereof to the clerk of the inferior court, where such defaulter or defaulters, his, her or their agent or attorney, may reside. And it shall be the duty of such clerk to enter the same in the book or digest of the taxes of the year when such return shall be made, and to furnish the collector of such year with a copy thereof, whose duty it shall be to receive the amount of such taxes, and pay the same over to the treasurer of this State, on or before the day of closing his accounts of that year.—[*But see 36.*] Defaulter to make Returns to the Clerk of the Inferior Court.  
Clerk's duty.

23. SEC. III. It shall be the duty of the clerks of the several courts where property shall have been, or may hereafter, be returned by defaulters, to transmit a copy thereof to the comptroller-general, on or before the first day of October, in each and every year. And also, to furnish the tax-collector, for the time being, with a copy of all such returns as have been made and not heretofore transmitted, as well as those which may hereafter be made. And it shall be the duty of the collector for the time being, to receive and pay over, as aforesaid, all such moneys as may appear to be due on such returns. Any law, to the contrary notwithstanding: *Provided*, such property has not been assessed with double tax, or noted by the proper officers, as being in default: *And provided also*, that such returns and payment of taxes shall not be construed to effect any seizure, or sale, that has been, or hereafter may be made. Collector's duty.  
Returns made to the Clerk to be transmitted to Comptroller and Collector.  
Collector's duty.  
If not in default. Saves previous action.

24. SEC. IV. The said clerks shall be entitled to receive the sum of fifty cents, for each year, on every return so to be made, as aforesaid, to be paid by such defaulter. Clerk's fees.



AN ACT to alter and amend the third section of an act, entitled "an act to impose a Tax for the support of Government for the year 1808."—*Approved Dec. 8, 1810.*

Property of  
Collector and  
his securities  
when bound.  
Claims how  
tried.

25. SEC. I. From and after the passing of this act, all the property of the tax-collector and his security or securities, as well for the county as State tax, shall be bound from the time of signing such bond.—[*And see 42.*]

26. SEC. II. When any execution may be issued against any tax-collector for taxes due this State, or any county within this State; and when the sheriff shall levy the same on property claimed by any person not a party to said execution, the same proceedings shall be had thereon as for the trial of the right of real or personal property, within this State: *Provided nevertheless*, that all such trials shall be had before the superior court of such county wherein such levy was made.—[*See 58.*]

Justice of the  
Inferior Court  
may issue Ex-  
ecution for  
County Tax.  
Justice In-  
ferior Court  
not to be Col-  
lector.

27. SEC. III. It shall and may be lawful for any three or more justices of the inferior court of each county within this State, to issue in their own names, for the use of the county, executions against any tax-collector and his security or securities, who may be in default for county tax.—[*See 55 and 56.*]

28. SEC. IV. No justice of the inferior courts, within this State, shall hereafter exercise the duties of tax-collector, or receiver of tax-returns.

To COMPEL Sheriffs to collect Moneys, under and by virtue of Executions issuing from the Treasurer, against Tax-Collectors, and to pay over the same.—*Approved Dec. 10, 1812.*

Sheriff's duty  
as to Trea-  
surer's Exe-  
cutions.

29. SEC. I. The several sheriffs within this State, who have, or may hereafter have, in their possession, any execution or executions, issued by the treasurer of this State, against any tax-collector, shall and they are hereby required to levy the same, and collect the amount or amounts thereof, in the same manner as pointed out by law for the collection of executions issuing out of the superior or inferior courts of this State.

Sheriff failing  
to do his  
duty, how to  
be proceeded  
against.

30. SEC. II. If any sheriff, as aforesaid, shall fail to levy and collect the amount of any execution so issued, as aforesaid, or to account with, or pay over the same to the treasurer, when thereunto required, then and in that case, it shall be the duty of the attorney or solicitor-general, within the several judicial circuits of this State, at the request of the treasurer, to apply to the judge of the superior court, during the session of said superior court, or in vacation, of the district, wherein such delinquent sheriff may reside, for a rule against such delinquent sheriff, to show cause why an attachment should not be obtained against him, on the usual terms, for neglect of duty.—[*See 49.*]

Judges of the  
Superior  
Courts to  
grant rule,  
etc. to compel  
payment.

31. SEC. III. It shall be the duty of the judges of the superior courts, on application, to grant such rule, and make such order, as in their opinion is best calculated to compel the payment of any moneys collected, or to be collected, by sheriffs, as aforesaid. And that all moneys collected, under and by virtue of this act, shall be paid into the hands of the attorney or solicitor-general, appointed for the circuit, when the said moneys have or shall be collected, and be by them respectively transmitted to the treasurer of this State.—[*See 49.*]

NOTE.—By the Act of Dec. 22, 1823, defining the duties of the Comptroller-General, etc., it is provided, that "Whenever any Execution or Executions against a Public Debtor, are placed in the hands of any Sheriff, or his Deputy, for collection, it shall be his duty to make return thereon, to the Attorney or Solicitor-General of the Circuit in which he lives, within three months; and upon failure to do so, the Attorney or Solicitor-General is hereby required to obtain a Rule, at the Superior Court next after the expiration of the three months, against said Sheriff, or his Deputy, requiring him to show cause why the money has not been collected, and if collected, why it has not been paid over. And should it appear that the money has been collected, and detained longer than the



time prescribed by this act, then the Sheriff, or his Deputy, shall pay twenty per cent. per annum, on the amount so detained, after a written demand by the Solicitor or Attorney."

To RAISE a tax for the support of Government, for the political year 1813.—

*Approved Dec. 10, 1812.*

32. SEC. II. The receivers of returns of taxable property shall, in the manner and at the times pointed out by the afore-recited act, [*act of 1804,*] receive the returns of taxable property of all persons liable to pay a tax until the 1st day of May, [*1st day of August—see 103,*] 1813, and shall immediately thereafter proceed to assess a fourfold [*see 39*] tax on the property of all such persons as shall then have neglected or refused to have made return of their taxable property; and in assessing such tax, the receiver shall be governed, as to the property owned by the defaulter, by such information as he may be able to obtain from the neighbors of such defaulter, or by the return on the digest in the clerk's office, made by such defaulter for the preceding year, [*see 86.*] And it shall be the duty of the receiver of returns of taxable property, previous to finishing his digest, to annex thereto the names of the defaulters, and the amount of tax assessed, in the manner herein-before pointed out, due by each. And the receiver shall be entitled to five per cent. on the amount of tax assessed on defaulters, as well as on the amount of the tax on those persons making regular returns [*see 67.*] And the tax thus assessed on persons neglecting or refusing to make return of their taxable property, shall be, by the collectors, collected and paid into the treasury, without any abatement, except such as shall be recommended through a grand-jury, on account of the insolvency of any person who may be so taxed, [*see 117.*] *Provided*, that on application to the justices of the inferior court, of each county, or a majority of them, [*they*] shall have power to remit such four-fold tax, so assessed, as aforesaid, if it should appear to them that the person or persons so assessed have not had an opportunity to make their return, agreeably to the directions of this act.—[*See 34 and 40.*]

Receivers' duty as to persons who refuse or neglect to give in their taxable property.

A list of Defaulters to be made out.

Inferior Court may remit excess of Tax.

33. SEC. III. No receiver of returns of taxable property, shall receive from any collector, any part of his commissions until he shall have produced to the collector the comptroller-general's receipt for the digest of taxable property required to be deposited in his office, in which receipt shall be specified the amount of commissions due such receiver, [*see 67.*] And no collector shall be allowed a credit at the comptroller-general's office for the commissions of any receiver, until he shall have produced to the comptroller, the receipt given by him to the receiver for the digest, as aforesaid, with the receipt thereon of the receiver, for the amount of his commissions, as therein specified.

No pay to Receiver until he produces the Comptroller-General's receipt, etc.

34. SEC. IV. The collectors of the tax imposed by this act, shall pay into the treasury the amount with which they stand charged in the comptroller-general's office, after deducting theirs and the receiver's commissions, [*see 67,*] and the amount of their insolvent lists; and shall close their accounts on or before the first day of December, 1814, [*see 107.*] And if any collector shall fail to close his account by the time above specified, it shall then be the duty of the treasurer and comptroller-general, immediately to issue execution against him and his securities for the balance which shall appear, by the comptroller-general's books, to be due, on the said first day of December, 1814; [*see 107;*] which balance shall bear an interest of eight [*seven*] per cent. per annum; and the execution thus issued, shall direct said interest to be collected accordingly: *Provided*, that in the counties where receivers and collectors are not regularly appointed, the treasurer and comptroller, shall previous to charging such collectors with interest, ascertain from the dates of their appointments, whether

Collector's duty as to accounting with the Treasurer, etc.

Proviso in favor of recently appointed Collector.



they have had the same length of time to collect the taxes, as is allowed collectors regularly appointed.

Receiver to deliver a Digest to the Collector. 35. SEC. V. The receivers of returns of taxable property, shall on or before the first day of August, 1813, [see 77,] deliver to collectors a digest of the taxable property of the counties for which they are, respectively, appointed, under the penalty of incurring the fine for non-performance of that duty, imposed by the act herein first recited, [see sec. 5, act of 1804.]

Who must proceed to collect the Tax. And the collectors may, immediately on the receipt of such digest, (provided they have been duly commissioned, and have given bond and qualified, agreeably to law,) proceed to collect the tax therein assessed, giving however, the notices required by the said first-recited act, [see secs. 5, and 8.]

Tax not to be collected, after 2 years, if a sufficiency of property can be found. 36. SEC. VI. No tax-collector shall proceed to collect any tax due from any individual, which he was authorized to collect, agreeably to law, by virtue of his appointment, after the expiration of two years: *Provided*, sufficient property can be found, in the county, to satisfy such tax due by any individual or individuals.

Insolvent list, how allowed. 37. SEC. VIII. No tax-collector shall be allowed his insolvent list after execution shall have issued against him, unless he will come before the comptroller-general, and have the same fairly adjusted.

To RAISE a Tax for the support of Government for the political year 1814, and to revive, alter and amend an act, entitled "an act to raise a Tax for the support of Government, for the political year 1813."—*Approved Dec. 6, 1813.*

Receivers m't give notice of the time of expiration for receiving Returns. 38. SEC. IV. From and after the passage of this act, the receivers of tax-returns shall give, at least, twenty days' notice, at the muster-ground in each captain's district, of the time of expiration, for receiving of said lists; together with the names of persons who have not then given in their lists; and immediately, after said time has expired, they shall make out a fair list of the persons in default, and advertise the same, at each captain's muster-ground; which shall supersede the necessity of advertising defaulters, in the public gazettes.

Four-fold Tax repealed. Double Tax assessed. 39. SEC. V. The provisions in the before-recited act, [act of 1812,] so far as respects the receivers assessing a four-fold tax in cases of default, [see 32,] be and the same are hereby repealed. And that the receivers of tax-returns shall proceed to assess a double tax in cases of default, as prescribed by the tax-law passed 10th December, 1812, raising a tax for the political year 1813.

Inferior Court may not remit whole of four-fold Tax. 40. SEC. VII. Nothing in the before-recited act, authorizing the inferior courts to remit four-fold tax on defaulters, [see 32,] shall be so construed as to authorize them to remit more than three-fourths of the tax charged on the receiver's books, or any greater part of said tax, than shall reduce the same to a less sum than his, her or their ordinary annual tax.

Taxes of previous years, how to be collected. 41. SEC. IX. That the receivers of returns of taxable property, and collectors of taxes, who may hereafter be appointed and qualified agreeably to law, be and they are hereby authorized and required to receive the returns of taxable property, and to collect the taxes thereon for all former years since 1800 inclusive, where any county is in default for not having made their returns as required by law: *Provided*, that the taxes shall be assessed in conformity to the tax laws in force at the time such default happened.

*Receiver of Tax>Returns' Notice.*

STATE OF GEORGIA, } Public notice is hereby given to all persons  
 Houston County. } concerned, that the time for receiving Tax-Re-  
 turns for the 619th District, Georgia Militia, will expire on the *twen-  
 tieth* day of the present month. The following persons residing in said  
 district, are in default, to wit: *John Jones, James Williams, etc., etc.*  
 This *July 1, 1859.*

JAMES TALYOR, R. T. R.

NOTE.—The above Notice must be given, at least, twenty days before the expiration of the time of receiving Returns.

*Notice (after the time of Receiving Returns.)*

STATE OF GEORGIA, } The following persons, residing in the 619th  
 Houston County. } District, Georgia Militia, are in default, not hav-  
 ing given in their Returns of Taxable property, to wit: *John Jones,  
 James Williams, etc., etc.* This *July 21, 1859.*

JAMES TAYLOR, R. T. R.

NOTE.—The above advertisement must be posted at the Muster-Ground of the District, which obviates the necessity of advertising in some news paper.

To LEVY a Tax for the support of Government for the political year 1815, and to reimburse the State, in part, the sum for which his Excellency the Governor is authorized, by a concurred Resolution, to settle with the General Government, the Direct Tax for the political year 1814.—*Approved Nov. 22, 1814.*

42. SEC. IV. No security or securities for tax collectors shall be entitled to hold the office of sheriff, in any county in this State, until all moneys collected by the said tax-collector or collectors shall have been paid by him or them, to the proper authorities.

Security of  
defaulting  
Collector not  
to act as  
Sheriff.

43. SEC. V. In all cases where the [treasurer and] comptroller-general shall issue executions against delinquent tax-collectors, it shall be lawful for the sheriff into whose hands such execution or executions may be placed, to collect from such delinquent tax-collector, two and a half per cent. on, and in addition to the amount of such execution or executions, which shall be full compensation for the trouble and expense of such sheriff or sheriffs, in collecting and paying over, at the treasury, the amount of such execution or executions as may be placed in their hands, as aforesaid: *Provided*, that every sheriff who shall receive said per cent. shall be liable to refund the same to the collector from whom it may be received, if he does not return the execution and pay over the money collected thereon for the State, at the treasury, on or before the day he may be required to do so, by said execution.

Sheriff's com-  
pensation for  
collecting mo-  
neys from de-  
faulting Col-  
lectors.

Sheriff must  
pay over mo-  
ney or lose his  
fees.

FOR THE RELIEF of certain Tax-Collectors in this State.—*Approved Nov. 22, 1815.*

44. SEC. I. If any tax-collector in this State shall have closed, or may hereafter, close his accounts at the comptroller-general's office, by paying into the treasury the amount due by him, without having been allowed an insolvent list, and shall, thereafter, obtain an insolvent list, duly certified by the grand-jury of the county for which he is collector, and produce the same to the comptroller-general, it shall be the duty of the said comptroller-

Amount of  
Insolvent List  
refunded in  
certain cases,  
may allow In-  
solvent List.



general to give such collector a certificate, setting forth that he had filed in his office, an insolvent list, duly certified, and that his account, as collector, had been previously settled and closed, without his having been allowed the amount of said insolvent list; which certificate being presented to the executive, the said collector shall be entitled to a warrant on the treasurer, from the governor, payable out of the contingent fund, for the amount of his insolvent list, as expressed in the aforesaid certificate of the comptroller-general.

To LEVY a Tax for the support of Government for the political year 1816.

—*Approved Dec. 16, 1815.*

Free persons  
of color may  
be hired out  
for their  
Taxes.

45. SEC. IX. In all cases where free persons of color shall fail or refuse to pay the taxes charged against them, and shall have no property on which to levy, the collector may levy on and hire out said free person of color, for such price as will produce the amount due the State.

#### ACT OF DECEMBER 8, 1815.

How persons  
who have  
paid Tax in  
one County,  
and returned  
as defaulters  
in another,  
may be re-  
lieved.

46. SEC. I. In all cases where any person shall have regularly listed and paid his taxes in the county where he resides, and be returned as a defaulter in another or different county, for the same tax, then and in that case, the grand-jury of the county, claiming such default tax, shall on application being made to the collector of said county, certify to the fact, and request the comptroller-general to countersign the same, so that it may serve as a sufficient voucher to authorize the treasurer of the State to credit the collector, by the same amount, as though it had been a part of his insolvent list.

Should the  
Collector exe-  
cute the prop-  
erty of such  
person, he  
shall forfeit  
\$50.

47. SEC. II. When any collector, after being furnished with the receipts of the receiver and collector of the county where the aforesaid tax has been paid, shall fail to apply to the grand-jury for a certificate, as aforesaid, and shall proceed to execute, or have executed the property of the person so returned as a defaulter, for each and every such offence, he shall pay the sum of fifty dollars, to be applied to county purposes.

To RAISE a Tax for the support of Government for the political year 1818.—

—*Approved Dec. 19, 1817.*

Incorporated  
Banks to  
make returns  
and pay Tax.

48. SEC. II. It shall be the duty of the president and directors of every bank incorporated by the legislature of this State, to cause the cashier thereof, to transmit to the treasurer of the State, annually, a return sworn to by him before some justice of the inferior court, or of the peace; in which shall be stated the amount of capital stock actually paid in, on the [first day of January,—see 51,] preceding the time of making such return; and on or before the [first day of December,] in each year, cause to be paid into the treasury, free of any cost or deduction whatever, the said sum of [thirty-one and a quarter cents] on every hundred dollars of capital stock returned in manner aforesaid.

Other Banks  
to make re-  
turns and pay  
Tax.

And it shall be the duty of the president and directors, managers or proprietors of every other bank, office of discount and deposit, or office of discount only, now in operation, or which may be established, or go into operation within this State, to cause the cashier thereof to transmit, annually, to the treasurer of this State, a return sworn to by him in the manner above pointed out, in which shall be stated the amount of capital stock actually employed or operated upon by such bank, office of discount and deposit, or office of discount only, on the first day of January preceding the time of making such return, and on or before the first day of December, in each year, cause to be paid into the treasury, free of any cost or deduction whatever, the said sum of [thirty-one and a quarter cents] on every hundred dollars of capital stock, returned in



manner aforesaid. And on neglect or refusal of any bank, office of discount and deposit, or office of discount only, (except the officers of the Bank of the State of Georgia, a return of the capital stock of which shall be made in manner aforesaid, by the principal cashier of said bank,) to make return or to pay the tax, in the manner herein pointed out, it shall be lawful for the treasurer of the State, and it is hereby made his duty, immediately after the first day of December, in each year, to issue his execution against the president and directors, managers or proprietors, of any bank, office of discount and deposit, or office of discount only, so neglecting or refusing to make return or pay the tax aforesaid, which execution shall be directed to the sheriff of the county in which such defaulting bank, office of discount and deposit, or office of discount only, shall be; and shall be issued for an amount equal to [thirty-one and a quarter cents] on every hundred dollars of the capital stock actually subscribed for in the Bank of the State of Georgia. And if any sheriff, to whom any execution issued, by virtue of the provisions of this act, may be directed, cannot find property whereon to levy, belonging to the bank, office of discount and deposit, or office of discount only, (against the president and directors, managers or proprietors, of which such execution may have issued,) it shall be lawful for such sheriff, and it is hereby made his duty, to levy the same on the individual property of all or any of the directors, managers or proprietors, against whom such execution may be, and to sell such property, or so much thereof as will satisfy such execution, and pay all cost that may be incurred in consequence thereof.

Treasurer to issue execution against defaulting Bank.

Amount of the execution.

How the Sheriff must levy execution and raise the money.

49. SEC. III. If any sheriff to whom an execution, (issued as herein required,) may be directed, shall fail to collect the same by the time therein specified, and pay the amount thereof into the treasury, or deposit the same in such bank as the treasurer may direct, subject to the order of said treasurer, it shall be lawful for, and it is hereby made the duty of any judge of the superior court of this State, to whom the treasurer shall make written application for that purpose, during the recess of the courts, to cause such measure to be taken to compel an immediate payment by such sheriff, of the amount of such execution, and such other proceedings to be had thereon, as would be authorized if a rule were obtained against such sheriff, in term-time.

Proceedings against a defaulting Sheriff.

50. SEC. IV. So much of this act as relates to the levying and collecting a tax on bank stock, shall continue in force until the same shall be altered or repealed by law.

This act made perpetual.

AN ACT to compel the Banks of this State, to pay a Tax on the highest amount of Bank-Stock, hereafter returned by them as subject to taxation, within the limits of their respective Charters.—*Approved Dec. 27, 1845.*

51. SEC. I. That hereafter, when any bank of this State shall return to the treasury the amount of bank-stock as subject to taxation, such bank thereafter, shall not be permitted to reduce said bank-stock, but shall be compelled to pay tax on the highest amount of such stock so returned as subject to taxation, within the limits of their respective charters: *Provided*, nothing herein contained, shall be so construed as to prevent such banks as are now authorized by law, to reduce their capitals, so to do, according to such laws.

Highest amount of Stock returned, to be continued, except in certain cases.

SEC. II. All laws militating against the provisions of this act, be and the same are hereby repealed.

AN ACT to raise a Tax for the support of Government for the political year 1823.—*Approved Dec. 21, 1822.*

52. SEC. IV. All and every person making returns for taxable property, may at the time of taking the oath prescribed by law, make an exception

Exceptions in Returns, allowed.



of such property as they, on their said oath, believe to have been, or will be, returned by some other person.

Tax-Collector's Bonds, their amount, and to be recorded.

53. SEC. V. The tax-collector's bonds, in the several counties of this State, shall be taken for at least double the amount of the tax the said county is liable to pay; which bond shall be recorded in the clerk's office of the inferior court, who shall receive from said tax-collector for such service, the sum of one dollar.—[See 110.]

Copy-Bond may be used.

69. SEC. VI. When the original bond may be lost, or otherwise mislaid, a copy of said bond, certified by the clerk to be a true copy, shall be held good, in the place of the original.

AN ACT to raise a Tax for the support of Government for the year 1825.

—*Approved Dec. 18, 1824.*

How levy on perishable property to be advertised, etc

54. SEC. IV. In all cases where execution shall be issued by tax-collectors and levied by any sheriff, or deputy-sheriff, or any constable, on perishable property; the said sheriff or constable shall advertise the same in three of the most public places in the said district, only; and be allowed the same fees as constables are authorized [to receive] for levying executions.

AN ACT to require the Collectors of Taxes to pay over the moneys collected by them for county purposes, to the proper authority. And to authorize the Inferior Court to issue execution against defaulting Tax-Collectors.—*Approved Dec. 24, 1825.*

Execution to issue against defaulting Collector and his securities, for County Tax.

55. SEC. I. In all cases where there may be any tax due to the county, in the hands of the collector of any county, and collected by the tax-collector of any county, and not paid over to the proper authority, on or before the first Monday in December, next after the same may be collected, in every year, the justices of the inferior court, or a majority of them, in each county, be and they are hereby authorized, immediately, to issue execution against any tax-collector and his securities, so neglecting or refusing to pay over such tax.

Subject to 25 per cent.

56. SEC. II. Any collector of taxes who shall fail or neglect to pay over such taxes, by the time specified in the preceding section, shall be liable to pay interest at the rate of twenty-five per cent. on the amount not paid over, which shall be required in the execution, issued as aforesaid.

### *Proceedings under the above Act.*

STATE OF GEORGIA, }  
Houston County. }

INFERIOR COURT,  
January Term, 1859.

Whereas, *Jefferson Baskin*, Tax-Collector of said County, makes default in paying over the Tax assessed for the year 1858, for County purposes, which is in his hands, collected by him, it is ordered, that the Clerk of this Court, issue against the said Collector and his Securities, Execution for the amount of *one thousand* dollars, (with interest at the rate of twenty-five per cent;) the same being the amount of tax due said County, in the hands of said Tax-Collector, which he has not paid over to the proper authority.

NOTE.—This Order must be entered on the Minutes.

*Execution against the Collector.*

STATE OF GEORGIA, { By John D. Winn, Henry M. Holtzclaw, John  
Houston County. { Ragin, William F. Postell and William T. Swift,  
Justices of the Inferior Court of said County.

To any lawful Officer to execute and return :

You are hereby commanded, that of the goods and chattels, lands and tenements, of *Jefferson Baskin*, Tax-Collector of said County, and his Securities, *Richard Roe* and *Charles Smith*, all of said County, you cause to be made the sum of *one thousand* dollars principal, (with the further sum of twenty-five per cent. interest on the principal sum ;) the same being the amount due said County, in the hands of said Tax-Collector ; of the Tax assessed for County purposes, for the year 1858. And have you said sums of money, and this writ, with your actings and doings thereon, before said Inferior Court, to be held on the *fourth Monday in July* next. This *January 20, 1859.*

*Given under my hand and official signature.*

JOHN H. KING, *Clerk.*

AN ACT to impose, levy and collect a Tax for the political year 1838, on property, real and personal ; and to inflict penalties for refusing or neglecting to comply with the provisions thereof ; and to point out the disposition to be made of said Tax.—*Approved Dec. 25, 1838.*

57. SEC. II. And it is hereby declared to be the duty of the justices of the peace, in each captain's district in this State, to make returns to the receiver of tax-returns, of all persons liable to pay taxes, in their respective districts, on or before the first day of May next, and in each and every year thereafter. Any law or usage to the contrary notwithstanding.

Justices of the  
Peace to make  
returns to the  
Receiver.

AN ACT amendatory of an act relative to the several Tax-Laws of this State, which was approved on the 8th day of December, 1810.—*Approved Dec. 23, 1840.*

58. SEC. I. That from and after the passage of this act, the rights and privileges secured by and under the second section of the above-recited act, [*see 26,*] be and the same are hereby extended, in all cases in which executions have issued, or may hereafter issue, for the collection, by any tax-collector, or justices of the inferior court.

Claims to  
property lev-  
ied on,  
allowed.

AN ACT to impose a Tax for the support of Government for the year 1841, and from thence afterwards.—*Approved Dec. 23, 1840.*

59. SEC. I. That the act passed on the twelfth day of December, in the year one thousand eight hundred and four, entitled "An act to raise a Tax for the support of Government, for the year one thousand eight hundred and five," and all acts amendatory thereof, so far as the same shall not be inconsistent with the provisions of this act, be and the same are hereby enacted and declared in force, for and during the year one thousand eight hundred and forty-one ; and from thence afterwards, until the same shall be repealed.

Act of 1804,  
and consistent  
acts, perpetu-  
ated.

60. SEC. IV. [All of this section, (which requires the Receiver to make out and deliver, certain copies of his Digest,) except the penalty, and the clause relating to Collectors, superseded by the Act of 1852.—*See 89.*] Under the penalty of one thousand dollars, for each and every omission to deliver said copies, or either of them, in the manner and within the periods above specified. And the tax-collectors of the several

Penalty for  
neglect.



Collector must proceed to collect. counties, shall proceed at once, to collect the taxes of their respective counties, according to the digest and assessment thereof, delivered to them, respectively, as aforesaid, by the receivers of tax-returns of their counties, respectively. And the said tax-collectors shall pay the taxes, so to be collected, into the treasury, on or before the first day of December, in each and every year; beginning with the year one thousand eight hundred and forty-one; subject to such deductions and allowances, as existing laws authorize, for compensation to the receivers and collectors, and other causes.

AN ACT to repeal an act entitled "an act to amend an act entitled 'an act to impose a tax for the support of Government for the year 1841, and from thence afterwards,' assented to the 23d December, 1840, passed 27th December, 1842." And to give time to Tax-Collectors, in certain cases.—*Approved Dec. 28, 1843.*

Time may be allowed Collector. 61. SEC. II. When any tax-collector shall make it appear, to the satisfaction of the comptroller-general and governor, that he cannot collect the taxes of the county, within the time required by law, it shall and may be lawful for them to allow further time, in their discretion, for the performance of his duty.

AN ACT to guard Estates of Deceased Persons from the liability to pay double Tax.—*Approved Dec. 22, 1843.*

Whereas, under the existing laws of this State, requiring the Receiver of Tax-Returns, of the several counties of this State, to turn over, within a given time, their books to the several collectors, thereby subjecting all persons who may have departed this life, from the first of January, [*April*,] to the time of returning the said books to the collector; and especially those on whose estates there may have been no administration, to double tax; for remedy whereof—

Estates of deceased persons relieved, in certain cases. 62. *Be it enacted*, That from and after the passage of this act, upon satisfactory evidence being made to any receiver of tax-returns in this State, that any person returned to him as liable for tax, and who may have died from the first of January, [*April*,] to the time he shall, by law, have to turn over his books into the hands of the collector, shall not be returned as a defaulter, but shall only be liable to pay the proper tax. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to levy and collect a Tax for each of the political years eighteen hundred and forty-six and forty-seven.—*Approved Dec. 26, 1845.*

Digest when to be returned to Comptroller. 63. SEC. III. It shall be the duty of the several receivers of tax-returns to make a return of their digests to the comptroller-general, on or before the first day of July, [*August*,] of each year, and if any receiver of tax-returns shall fail to return his digests, unless for good cause, (and [*to*] be approved by the governor,) he shall incur the penalty of one thousand dollars; which shall be collected of him and his securities, by execution, as in case of defaulting collector.

Defaulter double and treble taxed, etc. Double Tax for false return. 64. SEC. IV. If any person shall fail to make a return of taxable property under this act, such person shall be doubly taxed for the first year, trebly taxed for the second year, and increasing in the same ratio, each year, until a return is made. And if any person make a false or partial return, a double tax shall be assessed by the justices of the inferior court of the county in which such false or partial return is made; or [*on*] report of such fact to them by the receiver of tax-returns, at least three days' notice to such person, by order of the justices of said court [shall be given.]

65. SEC. V. Whenever, in any county, there shall be a failure to elect a



receiver of tax-returns, or tax-collector, or both; or from any other cause, digests will probably not be returned in due time, it shall be the duty of the justices of the inferior court, or a majority of them, to assemble forthwith, and notify the governor of such probable failure, and appoint some proper person or persons, to fill such vacant office or offices; who shall qualify before them, and enter upon the duties of his office, upon giving to said court, a bond with securities, executed in a proper form and for a proper amount.—[*For amount of Bond, see 53.*]

On failure to elect Receiver or Collector, what may be done.

66. SEC. VI. It shall be the duty of the governor to furnish the several receivers with blank forms, by which they shall make out their digests; and each digest, when so returned, shall be uniformly bound and labelled.

Blank digests to be furnished.

67. SEC. VII. The following rates of commissions shall be allowed on the net amount of each digest, to each receiver and collector, to wit:—

Commissions to Receiver and Collector.

On all digests over \$20,000—				3 per cent.			
"	"	"	"	10 and under \$20,000—	4	per cent.	
"	"	"	"	6 "	"	10,000—	5 "
"	"	"	"	4 "	"	6,000—	6 "
"	"	"	"	3 "	"	4,000—	7 "
"	"	"	"	2 "	"	3,000—	8 "
"	"	"	"	1 "	"	2,000—	9 "
"	"	"	under			1,000—	10 "

68. SEC. VIII. All laws and parts of laws in relation to taxes, now of force, not inconsistent with the provisions of this act, and necessary to carry it into full effect, be and the same are continued in full force and effect.

Consistent laws continued in force.

AN ACT for the correction of Errors committed by Receivers of Tax-Returns in receiving taxable property, or in assessing the Taxes payable thereon.—*Approved Dec. 25, 1845.*

*Whereas*, it frequently occurs, that the receivers of taxable property in the several counties in this State, in taking the quantity or quality of property returned as taxable, or in assessing the amount of taxes thereon, [*make mistakes*]; for remedy whereof—

69. SEC. I. *Be it enacted*, That whenever it shall be made to appear, to the satisfaction of the grand-jury of any county of this State, after the receiver of tax-returns has made out and returned his digest of the taxes of said county, that said receiver has committed an error in making an entry of either the quantity or quality of property returned, in his said digest, or in the amount of taxes assessed, that the said grand-jury may recommend to the inferior court of the county and the comptroller-general of the State, to cause the said errors to be corrected, on the digest returned, especially setting forth the error committed; whereupon it shall be the duty of the justices of the inferior court of the county and the comptroller-general, to cause the alleged error to be corrected on the digest returned to their respective offices, and to forward a certificate thereof to the tax-collector of the county, whose duty it shall be to collect the amount of taxes which appear to be due, as appears by said certificate; or, if he shall have collected the same, but not paid it over, he shall, in that case, return any excess over the proper amount of tax that he may have collected; and if he shall not have collected enough, he shall then proceed to collect the balance.—[*And see 106 and 107.*]

Errors to be corrected by Comptroller-General, Grand-Jury and Inferior Court. A certificate of the fact to be given.

Money not paid over to be refunded.

70. SEC. II. If the tax-collector shall have made his settlement with the comptroller-general and the county, before the correction of the digest, as provided for in the foregoing section, it shall be the duty of the comptroller-general to certify the amount over-paid, if any, to his excellency the governor, who shall draw his warrant on the treasurer for the same, in favor of the party to whom it may be due. And if it shall appear that

Amount over-paid to be refunded by the State.



Too little col- the collector has not collected a sufficient sum, in that case, the said col-  
lected, how to lector, or his successor, shall proceed to collect the same, and make return  
be realized. thereof to the treasury and the county, in the proportions respectively due  
them.

Re-funding by 71. SEC. III. If the part of the tax due the county shall have been  
the County. paid over, then the county-treasurer shall refund to the person, to whom  
it may be due, the sum that may have been over-paid on the county-tax.

SEC. IV. [Repealing section.]

AN ACT to compel persons owning or holding Plantations or Negroes, in  
any County in this State, and not residing therein, to give in and pay  
Tax for the same, in said County.—*Approved Dec. 24, 1847.*

Plantations 72. SEC. I. That all non-residents of counties in this State, having land  
and Negroes in cultivation and negroes thereon, be and they are hereby required to  
returned in give in their taxes thereon, in the counties in which the said plantations  
counties may be; and that the overseer or agent may give in the same, in the ab-  
where situ- sence of the owners.  
ated.

Execution 73. SEC. II. If the agent of such owner of such property shall neglect  
may issue for to return the taxable property, as the law requires, then execution shall  
Tax. issue for the amount of the tax, and not double tax.

SEC. III. All laws and parts of laws militating against this act, be and  
the same are hereby repealed.

AN ACT to levy and collect a Tax for each of the political years 1850 and  
1851, and thereafter.—*Approved Feb. 22, 1850.*

Nominal slave 74. SEC. IV. From and after the first day of March, 1850, each negro  
taxed \$150. or person of color, nominally a slave, who by any contract, or bargain and  
sale, or pretended bargain and sale, after the date aforesaid, may be held  
or owned by any white person, said negro or person of color [not being  
over sixty years of age, or valueless from decrepitude or disease—[see 95,]  
Must be Re- shall be taxed one hundred and fifty dollars. And every person when  
turned. making his or her return, shall state, on oath, what negro or negroes he or  
she holds in the right of and for the benefit of such negro; and for each  
and every negro so held, shall pay the tax of one hundred and fifty dollars,  
as above.—[See Act of Jan. 9, 1852; number 88.]

Slaves not to 75. SEC. V. From and after the first day of March, all owners or  
hire their own hirers of slaves, who shall permit said slave or slaves to hire his, or her, or  
time. their time, from said owners or hirers, at any period during the year, shall  
pay a tax of one hundred dollars, on each and every slave so hiring his, or  
her, or their own time: *Provided*, that the giving in said slave or slaves  
Not evidence as taxable property to tax-assessors, by said owner or hirer, shall in no in-  
in an indict- stance be used as evidence against said owner or hirer, (in an indictment  
ment. under the existing laws of this State,) to permit said hiring: *Provided*,  
Saves the city that nothing in this section shall operate in the city of Savannah, to pre-  
of Savannah. vent porters, laborers or others, from working out, under the ordinances  
of said city.

Tax on Agen- 76. SEC. IX. Each and every agent of any foreign bank, or individual,  
cies of Foreign residing in another State, doing business in this State, shall on or before  
Banks. the first [Monday in each and every year,] make a return, on oath, to the  
treasurer of this State, of the highest amount of loans, (or paper discounted,  
or exchange purchased, by him and running to maturity,) at any one time  
during twelve months, immediately preceding such returns. And it shall  
be the duty of such agent to pay into the treasury of this State, free from  
all cost or charge whatsoever, the same rate of tax, upon one-third of such  
highest amount so returned by him, as aforesaid, as is now imposed, or

may hereafter be imposed, by law, upon the chartered banks of this State; and shall be enforced and collected in the same manner.—[See 96.]

77. SEC. XI. The tax-receivers and collectors shall receive the same compensation now allowed by law, except the county of Chatham, whose collector shall receive the same commission as now allowed to counties whose digest is less than ten thousand dollars. And to net the digest, as provided for in the seventh section of the act of 1845, for the receivers, the default shall be deducted; and for the collectors, the insolvent list shall be deducted from the total amount of the digest.—[See 67.]

How collected.

Compensation of Receiver and Collector.

Deduction in favor of Receiver and Collector.

### *Oath of Receiver of Tax>Returns.*

STATE OF GEORGIA, } I, *James Taylor*, do solemnly swear, (or affirm,  
*Houston County.* } that I will truly and faithfully perform the duties of Receiver of Returns of taxable property, of said County, (the County to which I am appointed,) as required of me by law. And I will not receive any return but on oath or affirmation. And I do further swear, that I will carefully examine each and every Return of taxable property in this State, made to me, before receiving the same; and will, to the best of my ability, carry out the provisions embraced in the act of December 11th, 1858.

### *Oath of Tax-Collector.*

STATE OF GEORGIA, } I, *Edward Marshall*, Tax-Collector of said  
*Houston County.* } County, do solemnly swear, that I will faithfully discharge the duties required of me by law, as Tax-Collector. And that I will search out and make a true Return of all default Polls, Professions, Free Persons of color, and all taxable property not found on the Tax-Receiver's Digest, or not returned to the Clerk of the Superior Court, by the fifteenth of August. And that I will pay over all taxes collected by me, as required by law.

NOTE.—Originally, the Clerk of the *Superior Court* was allowed to receive Returns of taxable property; subsequently, that duty was devolved upon the Clerk of the *Inferior Court*, and so stands the law now. The mention of the Clerk of the *Superior Court*, therefore, is a mistake; the Clerk of the *Inferior Court* is meant. Notwithstanding, we have no authority to write the oath differently from what it appears in the statutes printed by authority. The simple mention of "Clerk of the *Superior Court*," in the oath, does not change the law.

### *Oath of Tax-Payer.*

"You do solemnly swear, (or affirm, as the case may be,) that the account you now give in, is a just and true Return of all the taxable property, (including Notes, Bonds, Open Accounts, or other Obligations for Money, on persons in other States; or Bonds of the United States; or of other States; or of Bonds of Corporations or Companies of other States; or of Shipping at sea;) which you were possessed of, held or claimed, on the first day of April last, or was interested or entitled unto, either in your own right or in the right of any other person or persons whatsoever, as parent, guardian, executor, administrator, agent, trustee, or in any other manner whatsoever; and that it



is not worth more than the valuation you have affixed to it; to the best of your knowledge—so help you God.”

*Tax-Collector's fi. fa.*

STATE OF GEORGIA, } By *Edward Marshall*, Tax-Collector of said  
Houston County. } State.

To all and singular the Sheriffs and Constables of this State.

You, and each of you, are hereby commanded, that of the goods and chattels, (if any to be found,) otherwise of the lands and tenements, of *John Doe*, you cause to be made the sum of *seventy* dollars, the amount of Tax due the *State of Georgia*, by said *John Doe*, for the present year, (1859,) by reason of the non-payment of the Tax of the said *John Doe*, as aforesaid, as appears to me from the Digest of the Receiver of Tax>Returns. And the sum of *five* dollars, the costs and charges incurred by the said *John Doe*, in consequence of the non-payment of the Tax aforesaid. Herein fail not. This *August 1*, 1859.

EDWARD MARSHALL, T. C.

NOTE.—The above Execution “shall be levied by either officer, when the Tax due does not exceed thirty dollars; but where the Tax exceeds that sum, the Execution shall be levied by the Sheriff alone.”—See Act of Jan. 21, 1852.

*Return by the Sheriff.*

No personal property to be found on which to levy this *fi. fa.*  
This *August 5*, 1859.

JOHN H. HALSTEAD, Sheriff.

*Levy on Land.*

Levied this *fi. fa.* on lot of Land number *forty-nine*, in the *tenth* district of *Houston County*, as the property of the Defendant; and have given the *Tenant in possession*, notice of said Levy. This *August 5*, 1859.

JOHN H. HALSTEAD, Sheriff.

NOTE.—The Sheriff, or the Constable, whichever levies the *fi. fa.*, must proceed to advertise, as in ordinary cases, except in certain cases mentioned in the Act of 1812.

*Sheriff's Advertisement.*

STATE OF GEORGIA, } On Tuesday, the *third* day of *October* next, will  
Houston County. } be sold at the Court-House door, in *Perry*, in said County, between the lawful hours of sale, lot of Land number *forty-nine*, in the *tenth* district of said County; or so much thereof as will be sufficient to satisfy the *State-Tax* of *John Doe*, for the present year, (1859;) (amount due *seventy* dollars, and interest and costs.) Said lot of Land contains two hundred two and a half acres, and is well improved. This *September 1*, 1859.

JOHN H. HALSTEAD, Sheriff.

NOTE.—The Sheriff or Constable, as the case may be, “shall be liable to be proceeded against by Rule, in their respective Courts, as is prescribed by law in relation to other Executions.”

AN ACT to levy and collect a Tax for each of the political years 1852 and 1853, and thereafter, until repealed.—*Approved Jan. 9, 1852.*

78. SEC. I. *Be it enacted*, That from and after the passage of this act, all real and personal estate, within this State, whether owned by individuals or corporations, resident or non-resident, shall be liable to taxation, subject to the exemptions herein-after specified.

What property subject to taxation.

79. SEC. II. That the term *Real-Estate*, as used in this act, shall be construed to include Land itself; all Buildings or other articles erected upon or affixed to the same; all Mines, Minerals, Fossils and Quarries, in and under the same, (except Mines belonging to the State.)

Real Estate defined.

And the term *Personal Estate*, as used in this act, shall be construed to include all Chattels; Moneys; Debts due from solvent debtors; whether on note, bill, draft, judgment or mortgage; or Open Accounts; Goods, Wares and Merchandize; Capital invested in shipping or tonnage; or Capital otherwise invested; Negro Slaves, Pleasure Carriages; Public-Stocks, and Stocks in moneyed corporations. Also, such portion of the Capital of incorporated companies liable to taxation on their capital, as shall not be invested in Real or Personal Estate.—[*And see 129.*]

Personal Estate defined.

80. SEC. III. That the following property shall be exempted from taxation, to wit: all exempted from taxation by the Constitution of this State, or under the Constitution of the United States; all Lands belonging to this State or the United States; every Building erected for the use of, and used by a College, Incorporated Academy or other seminary of learning; every Building for public worship; every School-House, Court-House and Jail, and the several lots whereon such buildings are situated, and all the furniture belonging to each of them; all Books and Philosophical Apparatus, not held as merchandize and for the purpose of sale; every Poor-House, Alms-House, House-of-Industry, and any House belonging to any charitable institution, and the real and personal estate belonging to any charitable institution or connected with the same; the real and personal estate of any public library and other literary associations; all stocks owned by the State, and by literary and charitable institutions. Also, all plantation and mechanical tools; all household and kitchen-furniture, not above the value of three hundred dollars, not held for purposes of sale or as merchandize; all libraries, all poultry, and two hundred dollars value of other property, belonging to each tax-payer; and also, the annual crops and provisions of the citizens of this State; and all fire-arms and other instruments; and all munitions of war, not held as merchandize; and all wearing apparel of the tax-payer and family. And the holder or owner of stock in any incorporated company, liable to taxation on its capital, shall not be taxed as an individual, for such stock.

Property exempted from taxation.

81. SEC. IV. That all lands held under warrants and surveyed, but not granted by the State, shall be liable to taxation, in the same manner as if actually granted.

Lands surveyed but not granted, taxable.

82. SEC. V. That all moneyed or stock corporations, deriving income or profit from their capital or otherwise, except as before excepted, shall be liable to taxation.

Moneyed and stock corporations taxable.

83. SEC. VI. That each and every free person of color, in this State, between the ages of eighteen and fifty, shall be taxed annually, the sum of five dollars.

Free persons of color.

83. SEC. VII. That the sum of five dollars shall be levied on all practitioners of law, physic, dentistry and daguerreian artists.

Professional tax.

85. SEC. VIII. That each and every male citizen, between the ages of twenty-one and sixty years, shall be taxed annually, hereafter, twenty-five cents.

Poll-tax.



How Receiver to receive Returns. 86. SEC. IX. That the receiver of the tax-returns, in each county, shall receive all returns to him, on the oaths of the persons making them, and at such valuation as they may affix. And if any person shall fail to make a return, or to affix a value, the receiver shall make such valuation and assess the tax thereon, from the best information in his power to obtain. And in cases where no return is made, or no valuation made by the person returning, he shall assess a double tax.—[*And see 134.*]

Duty of Receiver on failure to make Returns. 87. SEC. X. That it shall be the duty of the receiver to assess all real and personal estate not returned, or not assessed by the person returning the same, at the full market value.

Mode of classifying Returns etc. 88. SEC. XI. That the receiver of tax-returns shall require all persons to give in each and every tract or parcel of land he or she may own, specifying its location, quality and the number of acres, if known, and the aggregate value, including the value of the buildings, machinery, toll-bridges, or ferries, on the same. A classification of the personal estate, subject to taxation, as defined in the second section of this act, specifying the number of negro slaves and their aggregate value, and the aggregate value of all other chattels, moneys, debts due or to become due from solvent debtors, in whatsoever form; and each classification shall be entered in separate columns.

What a Return must specify.

Returns must be digested; manner of making out Digest.

89. SEC. XIII. That it shall be the duty of the several tax-receivers within the State, to take in all taxables herein-before enumerated, and enter the same in his book or digest, with the appraised value thereof, following the classification specified in the second and eleventh sections of this act, and return a copy of the same, made out in fair and legible handwriting, to the comptroller-general, and one to the clerk of the inferior court, and one to the tax-collector, on or before the first day of July, in each year; in which digest shall be carefully made out, an abstract, stating each subject of taxation, the amount of aggregate value of each, the number of acres of land; number of slaves, polls, free persons of color, professions, dentists and daguerreian artists.

NOTE.—The fourth section of the Act of 1804, (the greater part of which has been superseded,) required that the Receiver should make out and deliver to certain officers therein named, (and repeated in the foregoing section of this Act,) copies of his Digest, by a certain time, under the penalty of *one thousand dollars*. A question arises here—Is this part of the Act of 1804, *now* in force? The Compiler is inclined to the opinion that it is *not*.

Duty of Comptroller.

90. SEC. XIV. That when the comptroller-general shall have received said digest, he is hereby required to examine the same carefully, to detect any errors therein contained; and having corrected the same, if any shall be found to exist, he shall then foot up each column and ascertain the aggregate amount of each and all the digests, and report the same to his excellency the governor, who, with the assistance of the comptroller, shall assess such a rate per cent. (not exceeding one-twelfth of one per cent.) on the entire amount, as will raise an amount of revenue, corresponding to the wants of the State; and notify the several tax-collectors throughout the State, of the rate per cent. so imposed and the amount to be collected by him, in each county.

Rate per centum, how assessed.

Amount of Tax and rate of assessment.

91. SEC. XVI. That the amount of tax to be paid, annually, to the State, upon the amount of real and personal estate, taxable under this act, shall be one-twelfth of one per cent. [*but see 98,*] which shall be levied and collected and accounted for, according to the existing laws, together with the poll-tax, and tax on practitioners of law, medicine, free negroes, dentists and daguerreian artists.



92. SEC. XVII. That it shall be the duty of the comptroller-general, with the assistance of the treasurer, after the returns of taxes have been made by the tax-receivers of the several counties in this State, to make an estimate of the sum total of taxes which will be raised under this act, according to the per cent. assessed; and if it should appear that the sum total should exceed the amount of taxes required by this act to be raised, then the comptroller-general shall issue his circular, directing the tax-collectors of this State, to make such deduction, in an equal ratio, upon every thing taxed, according to value, as will reduce the sum total of taxes, as nearly to the amount required by this act to be raised, as is practicable; the comptroller specifying the per cent. deduction, necessary to be made.

1-12th of one per cent. raising too much Tax, what to be done.

93. SEC. XVIII. That the tax-receivers and collectors shall receive the same compensation now allowed by law.

Compensation of Receiver and Collector. Deductions in favor of Receiver and Collector. Specie funds.

94. SEC. XIX. That to net the digests, as provided for in the seventh section of the act of 1845, for the receivers, the default-list shall be deducted; and for the collectors, the insolvent-list shall be deducted from the total amount of the digests. And that all taxes due and payable, under any of the provisions of this act, shall be paid in gold and silver, or in the bills of specie-paying banks of this State.

95. SEC. XX. That the fourth and fifth sections of an act passed the 22d day of February, eighteen hundred and fifty, to levy and collect a tax for each of the political years 1850 and 1851, and thereafter, be and the same are hereby continued in full force and effect; saving and excepting so much of the fourth section, as is in the following words, to wit: "not being over sixty years of age, or valueless from decrepitude or disease."

4th and 5th sections of act of 1850 and 1851, continued in force.

96. SEC. XXI. That nothing in this act shall be so construed as to relieve banks, rail-roads, or agencies of foreign banks, from any special tax heretofore assessed on them or any of them.

Banks and Rail-roads.

97. SEC. XXII. That all laws and parts of laws militating against this act, except such parts of the tax-acts now in force in this State, as may be necessary to carry out this act, and which are declared in full force; be and the same are hereby repealed.

Repealing section.

AN ACT supplementary to an act entitled "an act to levy and collect a Tax for the political years 1852 and 1853, approved January 9, 1852.—  
*Approved Jan. 21, 1852.*

*Whereas*, by the fifteenth section of the above entitled act, to levy and collect a Tax for the political years eighteen hundred and fifty-two and eighteen hundred and fifty-three, it is enacted that the sum of three hundred and seventy-five thousand dollars, shall be raised for the support of the government of this State, for each of said years. And *whereas*, by the fourteenth section of said act, it has been further enacted, that to raise the said sum, for said political years, not more than one-twelfth of one per cent. shall be assessed on the actual value of all the property liable to taxation under the provisions of the above entitled act. And *whereas*, his excellency the Governor of this State, in a special message made to the House of Representatives, has expressed his doubts, whether the said sum of three hundred and seventy-five thousand dollars, necessary for the support of the government of this State, for each of the said political years, eighteen hundred and fifty-two and eighteen hundred and fifty-three, can be raised by the assessment of only one-twelfth of one per cent. on the estimated value of the property subject to taxation under said act; and hath recommended to the General-Assembly, as a precautionary measure, in case the said rate per cent. specified in said act, shall not be sufficient to raise the said sum, for said political years, eighteen hundred



and fifty-two and eighteen hundred and fifty-three, to pass an act, supplementary to said act, authorizing him and the Comptroller-General, on the return by the several Tax-Receiver of this State, of the digest of property subject to taxation, (under the provisions of said act,) and the value of the same; and upon the examination and footing up of said digest, it shall satisfactorily appear to them, that the said sum of three hundred and seventy-five thousand dollars cannot be raised by an assessment of one-twelfth of one per cent. on the value returned in said digest, that they may be authorized and empowered to increase the said rate per cent. so much, and no further, as may be sufficient to raise the said sum of three hundred and seventy-five thousand dollars, as aforesaid; now therefore, for remedy whereof—

Rate per cent. may be increased by the Governor and Comptroller-General, so as to raise the necessary amount.

98. SEC. I. *Be it enacted*, That if upon the return by the several tax-receivers of this State, of their respective digests, containing the property subject to taxation, and its value, in pursuance of the provisions as are contained in the said act, entitled “an act to levy and collect a tax for the political years eighteen hundred and fifty-two and eighteen hundred and fifty-three, it shall appear to his excellency the governor and the comptroller-general of this State, upon the examination and footing up of the same, that the said sum of three hundred and seventy-five thousand dollars, necessary for the support of the government of this State, for the said political years, cannot be raised by an assessment of one-twelfth of one per cent. on the aggregate value of all the property, as returned by said digest and subject to taxation, then in such case, it shall and may be lawful for his excellency the governor and [*the*] comptroller-general of this State, and they are hereby authorized, to increase the said rate per cent. specified in said tax-act, so much, and no more or further, than will be sufficient to raise the said sum of three hundred and seventy-five thousand dollars, necessary for the support of the government of this State, for each of the political years, as aforesaid. And thereupon, forthwith, to issue an order to each of the tax-collectors of this State, requiring them, and each of them, to proceed and collect, and receive of and from each tax-payer, the amount of his tax, at and after the rate per cent. so increased, and necessary for the purposes aforesaid.

Tax-Collectors' *fi. fas.* how directed, etc.

99. SEC. II. That when the tax-collector of any county, shall hereafter issue an execution for taxes in arrear, the same shall be directed “to all and singular, the sheriffs and constables of this State,” and shall be levied by either officer, when the tax due does not exceed thirty dollars; but, where the tax exceeds that sum, the execution shall be levied by the sheriff alone. And the said officers shall be liable to be proceeded against, by rules in their respective courts, as is prescribed by law, in relation to other executions.

SEC. III. That all laws or parts of laws militating against this act, be and the same are hereby repealed.—[For the adoption of this Act, see Act of Feb. 17, 1854; next Act.]

AN ACT to levy and collect a Tax for each of the political years 1854 and 1855, and thereafter until repealed.—*Approved Feb. 17, 1854.*

Certain sections of the Act of 1852 adopted.

100. SEC. I. That the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 13th, 14th, 16th, 17th, 18th, 19th, 20th, 21st and 22d sections of an act, entitled “an act to levy and collect a tax for each of the political years, 1852 and 1853, and thereafter until repealed,” approved January 9, 1852; and the 12th and 15th sections thereof, as herein-after altered and amended, be and the same are hereby continued in full force, until repealed.

\$400,000 to be raised, annually.

101. SEC. III. That the fifteenth section of said recited act, shall be so altered as to read as follows—That the amount so required to be assessed and

collected, shall not exceed the sum of four hundred thousand dollars annually, exclusive of the commissions of the receivers and collectors.

102. SEC. IV. That an act supplementary to the before-recited act, approved January 21st, 1852, be and the same is hereby revived and made supplementary to this act: *Provided*, that the amount to be raised under the first section of said act, shall not exceed the sum specified in the third section of this act. Supplementary act of 1852. adopt-d.

103. SEC. VI. That receivers of tax-returns shall have until the first day of August, to return their digests. Digests returned 1st August.

AN ACT to authorize the Justices of the Inferior Courts of the several counties in this State, upon the recommendation of the Grand-Juries thereof, to assess and collect a Tax for the payment of Grand and Petit-Jurors, or Grand or Petit-Jurors; and at their pleasure, to discontinue, and again, re-assess the same, upon said recommendation.—*Approved Feb. 27, 1856.*

104. SEC. 1. That from and after the passage of this act, it shall and may be lawful for the justices of the inferior courts of the several counties of this State, and they are hereby authorized, upon the recommendation of the grand-juries of the several counties aforesaid, to assess and raise a tax, for the reasonable compensation of the grand and petit-jurors, or grand or petit-jurors; and at their pleasure, to discontinue the same, and again to resume and re-assess said tax, upon the recommendation aforesaid. The jury and confession fees, in each case, to be paid into the county-fund, for that purpose. [*And see 137.*] Inferior Court may assess Tax to pay Jurors.  
Jury and Confession fees.

AN ACT to compel all incorporated Mining Companies of this State, to give in and pay Taxes on their Stock, in the County where the Mines are located.—*Approved March 1, 1856.*

105. SEC. I. That from and after the passage of this act, that it shall be the duty of all persons owning stock in the various mining-companies of this State, to give in and pay the taxes, in said county in which said mining companies may be situated. Any law, usage or custom, to the contrary notwithstanding. Mining Companies, where to pay Tax.

SEC. II. [Repeals all conflicting laws.]

AN ACT to authorize the Governor and Comptroller-General to correct mistakes of Receivers and Collectors of Taxes, or of any Tax-Payer, whereby more money is paid into the Treasury, than is required by law, [*and*] to refund the same; and the Governor to draw his warrant on the Treasury for said amounts. The Comptroller to settle up the business of his office, of other years. The Inferior Courts, or Grand-Juries, to allow Insolvent-Lists, before the fifteenth of December, of each year. Tax-Collectors to pay the Taxes by the twentieth of December, of each year. Comptroller to settle up the old and unfinished business of his office; his duty therein. Making out Digests, to make Indexes to the Books of his office; his compensation therefor, and for collection of Debts due previous to 1855; and to enter Tax-Collector's Bonds in a Book and file them.—*Approved March 3, 1856.*

106. SEC. I. That from and after the passage of this act, that in all cases where the receiver of tax-returns, or tax-collector, in any county in this State, shall make any mistake or mistakes, in their digests, or any one of them; or shall pay more money into the treasury of the State, than is required to be paid by law; or shall collect more money from any tax-payer than is lawful to be collected, and the same is paid into the treasury of this State, the governor and comptroller-general shall correct said mistakes, or errors, and proper entries thereof shall be made on the books of the comptroller-general, and the governor shall refund the sum or sums so unlawfully paid, as aforesaid, by drawing his warrant on the treasury therefor. And in all doubtful cases, the governor may refer the same to the next General-Assembly. Governor and Comptroller authorized to correct mistakes, in Receiver's or Collector's returns.



Inferior Court,  
or Grand-  
Jury, to allow  
Insolvent-  
List.

107. SEC. II. That the inferior courts of the several counties of this State, or the grand-juries thereof, may at any time before the fifteenth day of December, of each year, allow the tax-collectors their insolvent-lists. And the tax-collectors of this State, shall pay into the state treasury, the taxes of their respective counties by the twentieth day of December, of each year, and shall present the insolvent-list of their respective counties, at the same time.—  
[See 117.]

Comptroller-  
General to  
settle up the  
business of his  
office.

108. SEC. III. That the comptroller-general is hereby authorized to settle up all the business of his office, for all previous years; he may allow receivers and collectors of taxes, their commissions, and balance the books of his office, upon satisfactory proof of settlement and payment.

Default-prop-  
erty, etc.  
double tax.

109. SEC. IV. That the receivers of tax-returns, in returning default-property, as now required by law, be directed to place the real or market-value of said property, in all the appropriate columns of their digests, until they reach the column of "value after deducting \$200;" in [*this column*,] besides, in other places, doubling the tax on default-polls, dentists, professions, &c., the receiver is required to assess a double value or tax on said default-property.—[See 123.]

Bonds of Col-  
lectors to be  
recorded in  
Comptroller-  
General's  
office.

110. SEC. V. That the comptroller-general shall keep a book, in which to enter all bonds hereafter to be taken of tax-collectors, and file the same in his office. He shall collect all unpaid taxes of previous years; shall make an index to each book in his office, requiring an index; and for compensation therefor, shall receive five per cent. on all sums he may collect on taxes due the State, previous to the year A. D. 1855, and for his collection thereon.

AN ACT for the relief of Representatives and Securities of Tax-Collectors, in certain cases. And for other purposes therein mentioned.—*Approved March 4, 1856.*

Represent'tive  
of deceased  
Tax-Collector  
authorized to  
collect unpaid  
tax.

111. SEC. I. When any tax-collector has, or may hereafter, depart this life, and shall have paid into the treasury the full amount of taxes that he was by law required to pay; and shall have also paid to the county of which he was collector, the amount of taxes he was by law required to pay such county, but shall have failed and neglected to collect of the tax-payers of said county, the amount of taxes due from them, or any portion of them, or any part of such taxes, it shall and may be lawful for the personal representative of such tax-collector to collect of such tax-payers, the amount of tax so due and unpaid by them. And such representative shall have all the powers, and be clothed with all the rights, for the purpose of making said collection, that the tax-collector would be were he in life.

Securities to  
be reimburs'd.

112. SEC. II. When such tax-collector was, or may be at the time of his death, a defaulter for the amount of taxes due from him to the State, or to the county of which he was collector, and the securities of such collector have paid the amount of such defaults, it shall be the duty of such personal representative of such deceased tax-collector, to pay over the amount of money collected by them, as aforesaid, to said securities, in exclusion, and in preference of all other claims, debts and demands, that may exist against the estate of said collector: *Provided*, the same does not exceed the amount paid by them.

SEC. III. [Repeals conflicting laws.]

AN ACT to authorize Tax-Collectors in this State, to issue Summons of Garnishment, in certain cases; and to regulate the same. And for other purposes.—*Approved March 5, 1856.*

Collector may  
issue sum-  
mons of Gar-  
nishment.

113. SEC. I. When any tax-collector in any county in this State can find no property of the defendant on which to levy any tax execution in his hands, it shall be his duty to make an entry to that effect, on said exe-



cution; and it shall be lawful for such tax-collector, to issue summons of garnishment against any person, or persons, who he may believe are indebted to the defendant, or who may have money, or effects, or property, belonging to said defendant, in his or her hands. And which said summons shall be returned to the next superior court of the county for which he is tax-collector. Where return-  
able.

114. SEC. II. It shall be the duty of said tax-collector, to return said execution to said superior court, and enter on the execution the names of the persons garnisheed; and all the subsequent proceedings shall be the same as now prescribed by law, in relation to garnishments in other cases where judgment has been obtained or execution issued. Names of per-  
sons Gar-  
nisheed to be  
returned.

SEC. III. [Repeals conflicting laws.]

### *Form of Garnishment under the foregoing Statute.*

STATE OF GEORGIA, } *Robert Truth*—You are hereby required, per-  
Houston County. } sonally, to attend the Superior Court, to be held  
in and for said County, on the *fourth* Monday in *October* next, to an-  
swer, upon oath, what you are indebted to *John Doe*, of said County;  
or what money, or effects, or property, belonging to said *John Doe*,  
you have in your hands, or had at the time of the service of this Writ  
of Garnishment. Said *John Doe* having made default in the payment  
of his *State-Tax* for the present year.

*Witness my hand and official signature, this May 1, 1859.*

EDWARD MARSHALL, *Tax-Collector.*

AN ACT to prescribe the mode of proving Entries on the Books of Receivers of Tax Returns, in this State.—*Approved Dec. 22, 1857.*

114.\* SEC. I. That in all cases, where either party in any case shall desire to introduce in evidence, entries on the books of the receiver of tax-returns, it shall not be necessary to produce said books in court, but the entries relied on shall be considered sufficiently proven by a copy of such entries, certified by the clerk of the inferior court of the county where such books are required by law to be kept, without further proof. And such certificate shall be evidence in any county [*court*] in this State, in all cases where the books themselves would be evidence. Certificate of  
Entries in the  
Books of Re-  
ceiver of Tax-  
Returns, made  
evidence.

SEC. II. [Repeals conflicting laws.]

AN ACT to amend the Tax Laws of this State.—*Approved Dec. 22, 1857.*

115. SEC. I. It shall be the duty of the tax-collectors in the several counties of this State, to diligently search out such defaulters and the property in default in their respective counties, as may not be returned by the receivers of tax-returns, and to ascertain and enter in a book, to be kept by each of them for that purpose, such defaulters and the amount of taxable property in default; setting forth in all cases, the real value of the property so in default, and double tax such defaulters and property so in default and not returned by the receiver of tax-returns; and collect the same as now provided for the collection of other taxes; and to make a return thereof to the comptroller-general of this State, at the time of the final settlement with that officer. For this service the said collector shall receive both receiver's and collector's compensation. Collector to  
search out  
Defaulters, to  
be entered in  
a book, and to  
be double  
taxed.

116. SEC. II. That the section of an act in relation to allowing tax-collectors an insolvent list by the grand-jurors of the several counties of this State, approved February 26th, 1856, be and the same is hereby repealed. Collector's  
compensation.  
  
Part of Act of  
1856 repealed.



Act of 1856  
amended as to  
Insolvent list.

117. SEC. III. That section second of the act approved March 3d, 1856, on this subject, be so amended as in addition to the provisions thereof, to allow the justices of the inferior courts of the several counties of this State, at any time, whether in term-time or in vacation, to assemble and to allow the tax-collectors their insolvent lists.

SEC. IV. [Repeals conflicting laws.]

AN ACT to repeal an act approved February 26, 1856, entitled "an act in relation to allowing Tax-Collectors an Insolvent List, by the Grand Jurors of the several Counties of this State," and to amend the various laws for the collection of Taxes.—*Approved Dec. 21, 1857.*

Act of Feb.  
26, 1856,  
repealed.

118. SEC. I. That all of the above-recited act, entitled "an act in relation to allowing tax-collectors an insolvent list, by the grand jurors of the several counties of this State," be and the same is hereby repealed.

Collector to  
lay before G.  
J. or Inf. C't  
Ins. List.

119. SEC. II. That the collector in every county shall, on oath, be obliged to lay before the grand jury or inferior court, of each county, a list of such insolvents as may be in such county, on oath; who shall allow or disallow the same.

Insolvent List  
when it may  
be allowed.

120. SEC. III. That the inferior courts of the several counties of this State, or the grand juries thereof, may at any time before the fifteenth day of December, of each year, allow the tax-collectors their insolvent lists; and said insolvent lists can be allowed or disallowed, either upon the list of names furnished by the collector, on oath, as above required, or on *fi. fas.* with the proper entries thereon.

Amount al-  
lowed, how to  
be stated.

121. SEC. IV. That the grand juries or inferior courts in making out said lists, be required to state how much is allowed the collector on account of the State tax, and how much is allowed on the county tax.

Executions  
must be issued  
on Insolvent  
List. Money  
when collect-  
ed, how dis-  
posed of.

122. SEC. V. That when the collector shall have his insolvent list credited, it shall be the duty of the inferior court or grand juries, to retain a copy of such list, and direct the collector to issue executions for the same, and place them in the hands of some constable of the county for collection, who shall be entitled to the same fees as he is entitled to for other executions, and two and one-half per centum, and the balance shall be paid by the constable to the clerk of the inferior court, whose duty it shall be to transmit the same to the treasury.

AN ACT to amend the laws in regard to defaulting Tax-Payers, and to prescribe the duty of Tax-Collectors in such cases; to change the Oath of Tax-Collectors; to Tax the Managers of Lotteries in this State, and to prescribe the forfeiture of the venders of Lottery-Tickets, in Lotteries out of this State, and the manner of collecting the same; the Tax on Insurance Companies out of this State, when Agencies are established in this State, and where the Taxes shall be paid; duty of Comptroller-General in case of failure; Tax on Foreign-Bank Agencies, established in this State, and duty of Comptroller when they fail to make Returns; explains the *ad valorem* system, and what shall be given in for taxation, and prescribes the Oath of Tax-Payers; Rail-road Companies required to make their Returns of Taxes to the State Treasurer, time prescribed and the penalty of failure; the Comptroller-General directed to employ other Counsel than Attorney-General or Solicitors, in certain cases, by advice of the Governor, and shall fix the fees; Tax-Laws to be digested and printed, duty of Governor and Comptroller therein; to be distributed to the Receivers and Collectors of Taxes; their duty prescribed, and their successors in office, and their duty.—*Approved Dec. 11, 1858.*



123. SEC. I. That from and after the passage of this act, it shall be the duty of the tax-collectors of the several counties in this State, after the fifteenth of August, in each year, to search out and ascertain, as far as possible, all polls, professions, free persons of color, and all taxable property not returned to the receiver, or [not] on his digest. The collectors aforesaid, shall enter said default polls, professions, free persons of color, and taxable property, in a book [*kept*] for that purpose, and shall assess and collect thereon a double tax, and shall pay the same into the treasury of the State, on his final settlement with the treasurer, after deducting double commissions for the same; and shall deposit a copy of said book in the office of the comptroller-general. And that in all suits against defaulting tax-payers, which may be hereafter instituted in this State, (unless the jury are satisfied that the defendant has been guilty of fraudulent intent in assessing the value of his property,) he shall not be held liable to pay the fine or forfeiture provided in the eighth section of the act of December 12, 1804, nor any part thereof.

Tax-collectors must search out Defaulters

And enter them in a book; they are to be double taxed.

Unless the Jury find "no fraud."

124. SEC. II. That in place of the oath now administered to tax-collectors, they shall take and subscribe the following oath, or affirmation—  
I, A B, tax-collector for the county of ———, do solemnly swear, that I will faithfully discharge the duties required of me by law, as tax-collector; and that I will search out and make a true return of all default polls, professions, free persons of color, and all taxable property, not found on the tax-receiver's digest, or not returned to the clerk of the superior court by the fifteenth of August. And that I will pay over all taxes collected by me, as required by law.

Oath of Tax-Collector.

125. SEC. III. That each manager of any lottery, authorized by the laws of this State, shall pay to the State treasurer, one thousand dollars annually, free of all costs of collection; and in case of failure to pay the same, the said manager, or his agent, shall be subject to the same penalty and collection of taxes, as is now provided to [*for*] defaulting banks.

Manager of Lottery to pay annually \$1000.

126. SEC. IV. That every agent, or other person selling lottery-tickets, or other tickets of chance, not authorized by the laws of this State, be fined one hundred dollars for each offence, to be sued [*for*] and recovered in the superior courts of this State, in the county where the agent may reside; or, in case of non-residence, where the tickets aforesaid were sold; one-half to the informer, the other half to the funds of the county where sued.

Person selling lottery-tickets not authorized by law, fined \$100.

127. SEC. V. That all insurance companies, out of this State, doing business in this State, by agents or otherwise, shall pay one per cent. upon premiums received; and on failure so to make their returns and payments aforesaid, (said returns to be made under oath,) execution shall be issued, upon information, by the comptroller-general, against the managers, agents or other person or persons managing or acting for said insurance-company, for the sum of five hundred dollars each, subject to the provisions of the act of the 19th December, 1817, in relation to defaulting banks.

Insurance Companies out of this State, to pay one per cent. How collected.

128. SEC. VI. That the act approved 3d. March, 1856, entitled "an act more effectually to compel the payment of the legal tax heretofore imposed on the agencies of foreign banks," be and the same is hereby repealed: and in lieu of that act, the provisions of an act to assess and collect a tax for each of the political years 1850 and 1851, and approved 22d February, 1850, in relation to said foreign bank-capital, to be re-enacted, with this addition, to wit—That upon said failure to make a return, as required by said act, execution shall issue for the sum of two thou-

Act of 1856, repealed, and the Act of 1850 re-enacted and amended.



sand dollars, by the comptroller-general, upon information to him, one-half to the informer, the other half to the State treasury.

*And whereas*, doubts exist among some tax-payers, as to what property they are to give in and pay taxes for, under the present *ad valorem* system—

Articles to be  
returned, ex-  
plained.

Oath of Tax-  
Payer.

129. SEC. VII. *Be it therefore enacted*, That it is the true intent and meaning of the present law, that bonds, notes or other obligations for money, on persons in other States, or bonds of the United States, or of other States, or bonds of corporations of other States, and shipping at sea, besides the other items mentioned, except land and negroes out of this State, [must be given in] And to insure a more full return of the aforesaid items of property, the following shall be the oath, or affirmation, administered to tax-payers, to wit—“ You do solemnly swear, (or affirm, as the case may be,) that the account you now give in, is a just and true return of all the taxable property, (including notes, bonds, open-accounts or other obligations for money, on persons in other States; or bonds of the United States, or of other States; or bonds of corporations or companies, of other States; or shipping at sea,) which you were possessed of, held or claimed, on the first day of April last; or was interested [*in*,] or entitled unto, either in your own right or in the right of any other person or persons whatsoever, as parent, guardian, executor, administrator, agent, trustee, or in any other manner whatsoever; and that it is not worth more than the valuation you have affixed to it, to the best of your knowledge and belief—so help you God.”

Tax upon  
Rail-roads.

130. SEC. VIII. That the several rail-road companies in this State, now, or that may hereafter be in operation, are hereby required to make their returns to, and pay to the State treasurer, in each year, on or before the 31st December, one-half of one per cent. upon their net annual income of said rail-roads; and upon failure so to make their returns and payments, as aforesaid, shall be subject to the provisions of the act of 1817, in relation to defaulting banks.

Penalty if  
they fail.

Tax upon  
Express  
Companies.  
Returns by  
whom and  
how made.

131. SEC. IX. And that every express-company, doing business in this State, shall be liable to pay a tax of one per cent. upon the gross amount of their profits, for each and every year; to be ascertained by the returns of the principal officer of such company, made and verified in the same manner as other returns of taxable property are, by law, required to be made; the said return to be made by said officer to the receiver of tax-returns, in the counties, in the State, where such company have and keep their principal office. And that whenever, upon examination of the tax-digests, returned or filed in the office of the comptroller-general, he shall ascertain that any express-company, doing business in this State, has failed to make the return, as herein required, he shall immediately issue execution against such company, for the sum of ten thousand dollars; which sum it is hereby declared they shall forfeit to the State, for such neglect; to be levied and collected by the sheriffs of this State, upon any property of said company, whatever, in the same manner as other *fi. fas.* issued from the office of the comptroller-general, now by law, are required to be levied and collected.

Failing to  
make returns,  
Comptroller-  
General to  
issue execu-  
tion.  
Amount of ex-  
ecution.  
How to be  
levied and  
collected.

Comptroller-  
General al-  
lowed to em-  
ploy counsel.

132. SEC. X. That in all cases hereafter, whenever the comptroller-general shall consider it his duty to employ counsel, or an attorney, in the prosecution of tax-claims, and the collection of taxes due the State, he may select any attorney he may wish, (except in counties where the attorney-general or solicitors reside, then he shall employ them,) upon consultation with and advice of the governor; and they shall agree with said counsel or attorney, as to the amount of fee to be paid, on each case.

133. SEC. XI. That the governor appoint some competent person, to col-  
late and digest the tax-laws, of force in this State, under appropriate heads,  
and with a full and plain index; which shall be examined and approved by  
the governor and comptroller-general, and then printed in pamphlet form and  
sent to each and every receiver of tax-returns, and every tax-collector, in this  
State, when the tax-digests are sent by the comptroller-general. And the  
governor shall draw his warrant on the treasury of the State, for [*such*] sums  
as he may deem a reasonable compensation to the compiler and printer of  
said digest of tax-laws. And all receivers and collectors aforesaid, when their  
terms of office expire, shall turn over to their successors in office the said di-  
gests or pamphlets of the tax-laws, who shall receipt for the same; and in  
case of failure, in any case, to turn over the said digests of the tax-laws, the  
receiver shall charge the value of the digest of the tax-laws, in the list of the  
defaulting collectors' or receivers' property of taxes, and the same shall be  
paid as other taxes. The comptroller-general shall state the price of a copy  
of the tax-laws, and in case the copy of the tax-laws is torn, mutilated or de-  
faced, the collector or receiver in whose hands it may happen, shall be held  
responsible for the price of a new copy, as above directed.

Tax-Laws to  
be digested,  
printed and  
distributed.

Governor to  
pay for the  
same.

Must be  
turned over  
to successor,  
or paid for,  
etc.

Priced by  
Comptroller-  
General.

SEC. XII. [Repeals conflicting laws.]

AN ACT to make the Receivers of Tax-Returns, in the several counties of this  
State, hereafter to be elected, assessors of Taxes, in certain cases herein-  
after named; and for other purposes.—*Approved Dec. 11, 1858.*

*Whereas*, it is evident that there is a large amount of property owned in  
this State, that is returned far below the value thereof, thus depriving the  
State of a considerable amount of money, which would otherwise go into her  
treasury—

134. SEC. I. *Be it therefore enacted*, That from and immediately after the  
passage of this act, it shall be the duty of each receiver of tax-returns, in the  
several counties of this State, to examine carefully, each return presented to  
him, and if, in his judgment, he shall find the property embraced in said re-  
turn, returned below the value thereof, it shall be his duty to assess the value  
thereon.

True value  
of property  
must be  
assessed by  
Receiver.

Dispute be-  
tween Rec'ver  
and Tax-payer  
how settled.

135. SEC. II. That in case the individual making such return shall con-  
sider the assessment made by the receiver too large, he shall be permitted to  
leave it to three disinterested persons; one of whom he shall select, and the  
receiver shall select one, and these two shall select a third party, a majority  
of whom shall determine the amount of assessment on the property em-  
braced in said return.

Additional  
Oaths to be  
taken by Re-  
ceiver of  
Tax-Returns.

136. SEC. III. That in addition to the oath already to be taken, by each re-  
ceiver of tax-returns, in each county of this State, hereafter to be elected, the  
following shall be added thereto, viz.: I, ———, of the county of  
———, State of Georgia, do solemnly swear, that I will carefully examine  
each and every return of taxable property, in this State, made to me, before  
receiving the same; and will, to the best of my ability, carry out the pro-  
visions embraced in this act.

SEC. IV. [Repeals conflicting laws.]



## COUNTY TAX.

AN ACT to amend an act entitled "an act to authorize the Justices of the Inferior Courts of the several Counties in this State, upon the recommendation of the Grand Juries thereof, to assess and collect a Tax for the payment of Grand and Petit Jurors; and at their pleasure to discontinue, and again, re-assess the same, upon said recommendation;" approved Feb. 27, 1856. —*Approved Dec. 11, 1858.*

Clerk to issue Certificate to Jurors. 137. SEC. I. That the act whose title is above recited, be so amended as to authorize the clerks of the superior and inferior courts of this State to issue to each of the grand or petit, or grand and petit jurors, of the several counties of this State, (whose inferior courts have raised, or may raise a tax, in accordance with the provisions of said act,) a certificate; which shall be held and deemed a warrant upon the county treasury, for the amount of money due said juror, in accordance with the *per diem* pay fixed by the inferior court. County-Treasurer must pay. Collectors must collect Tax. And the county-treasurer is hereby authorized and required to pay the same out of the fund raised under the before-recited act. And the tax-collectors of said counties are authorized and required to collect and pay over said tax so raised, as the county taxes.

AN ACT to impose an additional tax on Proprietors or Exhibitors of Shows.—*Approved Dec. 18, 1820.*—[*See act of 1835; number 148.*]

Show-men may be fined; and by whom. 138. SEC. I. From and immediately after the passing of this act, it shall be the duty of the justices of the inferior courts, justices of the peace, and the corporation officers of all cities, towns or villages within this State, or any one or more of them, to exact and collect, from all proprietors or exhibitors of shows, a sum not exceeding fifty nor less than five dollars, for each and every day that [*they*] shall exhibit shows of any kind, within any corporation or county in this State.

Money how appropriated. 139. SEC. II. All sums so collected within the limits of any corporation, shall be applied, by the officers of such corporation, to such purposes as they may deem proper, within the limits of their official jurisdiction.—[*See 145.*] And all sums so collected by the justices of the inferior courts or justices of the peace, without the limits of any corporation, shall be appropriated to county purposes.—[*See 145.*] Fines how collected. Which said fines and penalties shall be collected in the same manner as other fines and penalties are collected under the existing laws of this State.—[*See 147.*]

AN ACT to authorize the Justices of the Inferior Court in the several Counties in this State, to levy Extraordinary-Taxes for County purposes.—*Approved Dec. 19, 1821.*

Extra Tax may be levied by the Justices of the Inf. Court; how collected. 140. SEC. I. From and after the passing of this act, the justices of the inferior courts of the respective counties in this State, or any three of the bench of justices of said court, in any county, shall have power, whenever in their opinion the exigencies of their respective counties may so require, to levy upon the inhabitants of any county in which the said justices may reside, a tax extra-

ordinary of the general State-tax; and shall be authorized to have the same collected by the tax-collector for any county in which such tax may be levied by them: *Provided*, that nothing herein contained shall be construed to authorize the justices aforesaid, to order any levy which shall exceed fifty *per centum* on the general State tax, annually.

141. SEC. II. No extraordinary tax shall be levied and collected by the inferior courts, as by this act contemplated, unless two-thirds of the grand-jury of the county, shall first recommend the same, at a regular term of the superior court. Must be recommended by Grand-Jury.

142. SEC. III. It shall be the duty of the tax-collector of any county in which an extraordinary-tax may be levied, in the manner provided in the foregoing section of this act, upon being required to do so by the justices of the inferior court, or a majority of them, to give bond and approved security to the justices aforesaid, or their successors in office, in a sum not exceeding double the amount of the extraordinary-tax assessed; conditioned for the faithful collection and payment of the same into the clerk's office of the inferior court; there to remain subject to the order and application of the justices of the inferior court, for county purposes. And the collector shall be entitled to the usual commission for collecting any such extraordinary-tax, to be assessed and levied as aforesaid. Tax-Collector must give Bond, and collect the Tax.  
  
His pay.

### *Bond of Collector to collect County-Tax.*

STATE OF GEORGIA, } We, *James Shine* as principal, and *John Killen*  
Houston County. } as security, both of the County aforesaid, acknowledge ourselves held and bound to *John Ragin, Henry M. Holtzclaw, John D. Winn, William F. Postell and William T. Swift*, Justices of the Inferior Court of said County, and their successors in office, in the sum of *two thousand* dollars; subject to the following condition—

The condition of the above obligation is as follows—whereas, the said Justices have assessed an Extraordinary-Tax on said County, for County-purposes, amounting in the aggregate to the sum of *one thousand* dollars: now, should the said *James Shine*, (Tax-Collector of said County,) faithfully collect said tax, (agreeably to the assessment *this day* furnished him,) and pay the same into the Clerk's Office of the Inferior Court of said County, according to law, then the above obligation to be void; otherwise, of force. This *May 1, 1859*.

Witness—  
*James Mack, J. P.*

JAMES SHINE, *prin'l.* [L. S.]  
JOHN KILLEN, *sec'ty.* [L. S.]

AN ACT to assess a Tax on all persons exhibiting Shows of the different descriptions, in the Counties of Coweta, Merriwether, Gwinnett and Union in this State; and for other purposes therein named.—*Approved Dec. 26, 1835.*—[*Made general—see 151.*]

143. SEC. I. From and after the passage of this act, all persons, either owners or principal managers, wishing to introduce and exhibit shows, for the sake of profit or gain, in the said counties in this State, shall pay the following tax, each and severally, to the clerk of the inferior court of each of the said respective counties in which they may wish to exhibit—for exhibiting on horses, the sum of twenty-five dollars; for introducing and exhibiting animals, beasts or vermin, or any other of the like description, the sum of ten dollars; for exhibiting in person, pictures or fictitious figures, the sum of five dollars. Shows to pay Tax.  
  
Amount of Tax, on Shows of each description.

144. SEC. II. It shall be the duty of the clerk of the inferior court, of the



Clerk of the several counties in this State, on application of any person wishing to exhibit either of the above-denominated shows, and on their paying into the hands of the said clerk, the amount of tax so assessed, agreeably to the provisions of this act, on each particular show that he may wish to exhibit, to grant said applicant a certificate in his own name; setting forth the particular description of such show, so to be exhibited, under his hand and the county seal, on said applicant paying him the sum of one dollar for his services. And the certificate so obtained, shall be a sufficient license for the person so applying, to exhibit such show in said county and no where else, for the term of twelve months from the date, and no longer.

Clerk's fee.

145. SEC. III. The money arising, agreeably to the provisions of this act, shall be placed under the direction of the inferior court, of the several counties of this State, to be appropriated, one half for the support of the poor, and the other half for building bridges, and other county purposes.

Tax how appropriated.

146. SEC. IV. If any person or persons should exhibit either of the above denominated shows, without first complying with the second section of this act, he shall forfeit and pay, for each and every violation of the provisions of this act, the several sums, viz:—For exhibiting on horses, the sum of fifty dollars; for exhibiting animals, beasts or vermin, or any thing of the like description, the sum of twenty dollars; for exhibiting in person, pictures or fictitious figures, the sum of ten dollars.

Penalty for violating this statute, Double Tax.

147. SEC. V. On oath being made by any citizen of the county, where such violation of the provisions of the above-recited acts has been committed, before any judicial officer of this State, justice of the inferior court or justice of the peace, it shall be his duty to issue a warrant of attachment against the property and effects of the person so offending, or so much thereof as will fully satisfy the amount set forth, and all costs; directed to any sheriff, constable, or their legal deputy, to execute and return the same; and it shall be tried and governed under the provisions of the attachment-law, now in force in this State. And any person so exhibiting, on being called on to show his license, from under the hand of the clerk, and county-seal, and failing or refusing to do so, shall be sufficient ground for any person to make oath of the violation of the true intent and meaning of the provisions of this act; and the fine so collected, agreeably to the provisions of this act, shall one-half go to the informer, and the other as above provided for, in the third section.

On complaint on Oath, attachment to issue against the property of the offender.

148. SEC. VI. The clerks of the said several counties, shall record the license so granted and the different amounts received, and shall pay over all money received for granting such license, to the county treasurer, or the clerk of the inferior court, where there is no county treasurer, (except his fee for issuing,) and take the treasurer's receipt, and record the same in his receipt-book.

How the fine imposed is to be distribut'd.

Clerk must pay over money to County-Treasurer.

149. SEC. VII. Nothing herein contained shall be so construed as to operate or interfere with the incorporation laws, in this State.

Corporate powers saved.

Municipal laws not abrogated by this statute.

150. SEC. VIII. Nothing contained in this act, shall be held to affect or impair the powers heretofore granted to municipal corporations in this State; to prohibit, tax or license, any of the shows or exhibitions, or other matters mentioned in this act.

SEC. IX. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act entitled "an act to assess a tax on all persons exhibiting shows of the different descriptions in the counties of Coweta and Merriwether, and Gwinnett and Union, in this State, and for other purposes therein named," passed on the 26th day of December, 1835.—  
*Approved Dec. 25, 1837.*

151. SEC. I. *Be it enacted*, That from and after the passage of this act, the provisions of the above-recited act shall take effect and go into operation in each and every county in this State, and become a general law. Any law, usage or custom, to the contrary notwithstanding; except that when the exhibition takes place in any incorporated town or village, the tax shall go to the funds of said corporation. Act of 1835  
made general.  
  
Tax how  
disposed of.

### *Show License.*

STATE OF GEORGIA, } The undersigned, Clerk of the Inferior Court  
Houston County. } of said County, hereby certifies that *Sancho Mountebank*, principal manager of an exhibition performed on horses, known and called a *Circus*, (which exhibition is made for profit,) has paid into my office the sum of *twenty-five dollars*: therefore, I do hereby certify, that the said *Sancho Mountebank*, principal manager of said *Circus*, with his company, has permission to exhibit, for profit, in said County, said *Circus*, for the term of twelve months from this date. This *May 1*, 1859.

*Given under my hand and seal of office.*

[Seal.]

JOHN H. KING, C. I. C.

NOTE.—Where the exhibition is to take place in a City, Town or Village that is incorporated, “the License must be procured from the Mayor, Intendant, or Head-Man of the Corporation.

### *Proceedings against Shows without License.*

STATE OF GEORGIA, } In person appeared before the undersigned, one  
Houston County. } of the *Justices of the Inferior Court* of said County, *Marcus Kunze*, a citizen of said County, who being sworn, saith, that *Sancho Mountebank*, principal manager of a certain Exhibition on Horses, (for profit,) called a *Circus*, without license or authority, did, to wit, on the *first* day of *May*, eighteen hundred and *fifty-nine*, in the said County, at a place called *Wilna*, exhibit the said *Circus*, for profit, contrary to the statute in such case made and provided. This *May 2*, 1859.

Before me—*John Ragin*, J. I. C.

MARCUS KUNZE.

### *Attachment against the Offender.*

STATE OF GEORGIA, } To the *Sheriff* of said County, to execute and  
Houston County. } return.

Whereas, I have been informed, by the oath of *Marcus Kunze*, a citizen of said County, that *Sancho Mountebank*, principal manager of a certain exhibition on horses, called a *Circus*, did, to wit, on the *first* day of *May*, eighteen hundred and *fifty-nine*, in said County, at a place called *Wilna*, (without license or authority, and against the statute in such case made and provided,) exhibit said *Circus*, for profit. Therefore, you are hereby ordered and directed to attach the property and effects of the said *Sancho Mountebank*, or so much thereof as will satisfy the amount of *fifty* dollars, and the costs of this proceeding. And have you this writ before the next *Inferior Court*, to be held in and for said



County, on the *fourth* Monday in *April* next, with your actings and doings in the premises.

*Witness my hand and private seal, this May 2, 1859.*

*John Ragin, J. I. C. [L. S.]*

NOTE.—Whenever a violation of the foregoing statute occurs in an Incorporated City, Town, or Village, the authority to proceed against the party is vested in the Corporators.

## CHAPTER XXXVI.

ORDINARY—COURT OF ORDINARY—EXECUTOR—ADMINISTRATOR—GUARDIAN—WARD—ORPHAN—POOR—MARRIAGE LICENSE—TESTATOR—ESTATE—WILL—CODICIL.

[For the purpose of convenience and perspicuity, we have divided this Chapter into parts, thus—1. Ordinary. 2. Executor, Administrator and Guardian. 3. Distribution of Estate. 4. Will, Codicil and Caveat. Notwithstanding this division, the parts of the Chapter are connected by numbers, which run consecutively, through the Chapter. This arrangement (numbering) was first adopted by Major Prince, and is found simple and convenient.]

### ORDINARY.—Part 1.

AN ACT to alter and amend the sixth section and third article of the Constitution of the State of Georgia.—*This act passed Feb. 22, 1850. Passed again Dec. 5, 1851.*

*Whereas*, the sixth section of the third article of the Constitution of this State, reads in the following words, to wit—

“The powers of a Court of Ordinary, or Register of Probates, shall be vested in the Inferior Courts of each County; from whose decisions there may be an appeal to the Superior Court, under such restrictions and regulations as the General-Assembly may by law direct; but the Inferior Court shall have power to vest the care of the Records and other proceedings therein, in the clerk or such other person as they may appoint. And any one or more Justices of said Court with such Clerk or other person, may issue Citations and grant Temporary Letters in time of vacation, to hold until the next meeting of the said Court. And such Clerk, or other person, may grant Marriage Licenses.”

Office of Ordinary established, from whose decisions there may be an appeal. SEC. I. *Be it enacted*, That so soon as this act shall have passed agreeably to the requirements of the Constitution, the following shall be adopted in lieu of the section above recited, to wit—

The powers of a Court of Ordinary or Register of Probates, shall be vested in an Ordinary for each County, from whose decisions there may be an appeal to the Superior Court, under such restrictions and regulations as may be, or may have been, prescribed by law. The said Ordinary shall be *ex officio* Clerk of said Court, and may appoint a Deputy Clerk. The Ordinary, as Clerk, or his Deputy, may issue Citations and grant Temporary Letters of Administration, to hold until Permanent Letters are granted. And said Ordinary

Powers of Ordinary.

as Clerk, or his Deputy, may grant Marriage Licenses. The Ordinaries in and for the respective Counties, shall be elected as other County-Officers are, on the first Monday in January, eighteen hundred and fifty-two, and every fourth year thereafter; and shall be Commissioned by the Governor, for the term of four years. In case of a vacancy in the said office of Ordinary, from any cause, the same shall be filled by election, as is provided in relation to other County-Officers. And until the same is filled, the Clerk of the Superior Court, for the time being, shall act as Clerk of the said Court of Ordinary. Vacancy how filled.

### *Ordinary's Official Bond.*

STATE OF GEORGIA, } We, *John Doe*, principal, and *Richard Roe*,  
*Houston County.* } security, acknowledge ourselves indebted to his  
 Excellency *Joseph E. Brown*, Governor of said State, for the time being, and his successors in office, in the sum of two thousand dollars, subject to the following conditions—

The conditions of the above obligation are these—whereas, said *John Doe* has been elected Ordinary of said County, and is, therefore, *ex officio*, Clerk of the Court of Ordinary and School Commissioner of said County: now, should said *John Doe* faithfully discharge his duties as Clerk, by himself and his deputy, and shall discharge all the duties of School Commissioner; and faithfully apply all the moneys which may come into his hands in that capacity; then, the above obligation to be void; otherwise, of force. This *May 1*, 1859.

Approved—

*John D. Winn, J. I. C.*

*John Ragin, J. I. C.*

*Charles Anderson, J. I. C.*

JOHN DOE, *principal*. [L. S.]

RICHARD ROE, *security*. [L. S.]

AN ACT to carry into effect the amended Constitution of this State, in reference to the Ordinaries of said State; and for other purposes.—*Approved Jan. 21*, 1852.

1. SEC. I. *Be it enacted*, That from and after the passage of this act, the several courts established in pursuance of the provisions as contained in the above-recited amended Constitution, shall be known by the name and style of the Court of Ordinary; and that the person who shall be, or may have been, elected in pursuance of the provisions of said amended Constitution, shall be known as the Ordinary; and that all laws now of force which apply to the justices of the inferior court, sitting as a court of ordinary, and to the clerks of said court, and which are not inconsistent with the provisions of this act, be and the same are hereby continued and made applicable to the proceedings of said Courts of Ordinary, and to the Ordinary of said court. Name of the Court.  
Title of pre-siding officer.  
Consistent laws continu'd in force.

2. SEC. II. That all laws which now authorize the clerk of the Court of Ordinary to receive any estate of any kind, under any circumstances, into his hands, be and the same are hereby repealed. And that in all cases where any estate is now, or shall be unrepresented, either in the first instance, by the failure of any person to apply for letters of administration, or letters testamentary, or letters of guardianship, or after applying, have now, or shall hereafter, fail or refuse to give the bond and qualify as required by law; or if a vacancy shall occur by the death, dismissal or otherwise, of any administrator or administrators or administratrix, executor or executrix or executors, guardian or guardians; or shall be unrepresented Laws repealed.  
Unrepresent'd Estates, how provided for.



for any other cause, then and in all such cases, it shall be the duty of the Ordinary to vest the administration or guardianship of such estate, either in the clerk of the superior or inferior court of the county, or in any other person or persons residing in said county, whom he shall deem fit and proper for such administration or guardianship, in his discretion; requiring bond and security, as in other cases: *Provided always*, that the said Ordinary shall first give thirty days' public notice, as heretofore required by law, in such cases.

Notice must be given.

Clerks of C. O. heretofore appointed, to come to settlements.

3. SEC. III. That the said Ordinary shall, within three months after his qualification, require all clerks of the former Court of Ordinary, who have been appointed by the said court, administrators or guardians on any estate, and have not given good and sufficient bond for said administration or guardianship, to come to a full and fair exhibit and account of the condition of said estate or estates, and either to give bond and security as now required by law, or in the event of his failure to do so, to be dismissed; and the said Ordinary shall forthwith appoint another administrator or guardian as now required by law, under the foregoing provision of this act.

Executor, etc. elected Ordinary, his letters to abate.

4. SEC. IV. That upon the first election for Ordinaries in this State, any person who may be elected, shall not be disqualified for said office by reason of his being at the time of his election an executor, administrator or guardian, but immediately upon his qualification for said office his letters testamentary or of administration or guardianship, shall abate, when such letters were obtained in the county for which he was elected Ordinary. And in cases when such Ordinary has received such letters upon his own application, and when the estate is not represented by any other person, it shall be his duty forthwith to

Citation must be issued.

issue a citation, calling upon all persons interested in such estate or ward, to appear and apply for letters, which shall be granted in accordance with all the provisions of the law, regulating the granting of such letters. And if no application be made, the administration of such estate or guardianship, shall devolve upon the clerk of the superior court of the county, or such person as shall be appointed by the judge of the superior court. And in cases where such Ordinary may by virtue of any former office held by him, have been appointed administrator or guardian, the said office and duty shall devolve upon

If no application be made, what must be done.

the clerk of the superior court of the county, to whom the proper letters shall be issued, and whose duty it shall be, in all cases where such administration or guardianship is thrown upon him, to receive from the said Ordinary, the estate in his hands and to make a prompt settlement of the accounts of said Ordinary with said estate. And should said Ordinary neglect or refuse to discharge any of the duties pointed out in this section, he shall be proceeded against by *mandamus*, at the instance of the clerk of the superior court, or any person acting in behalf of the estate or ward, in his custody. And if in case any Ordinary who may be elected shall fail justly to account for all estates and moneys in his hands as executor, administrator or guardian, he shall forever after be disqualified to hold said office.

Ordinary disqualified to be Exe'r, Adm'r or Guardian. All Executors disqualified.

5. SEC. V. That the Ordinary, after his election and qualification, shall not receive any estate in his hands as executor, administrator or guardian, during his continuance in office. And from and after the expiration of the first term of office of the Ordinary, no executor, administrator or guardian, whilst he holds such office in the county of his residence, shall be qualified or competent to hold the office of Ordinary.

J. I. C. refusing to deliver books, what may be done.

6. SEC. VI. That if the justices of the inferior court of any county, or a majority of them, shall refuse to deliver up to any Ordinary, to be elected under the provisions of the amended Constitution, the books and paper belonging to the Court of Ordinary of said county, in their legal custody and possession,



when demanded by said Ordinary, it shall and may be lawful for said Ordinary to go before the judge of the superior court of the county of his residence, and make affidavit before him of the fact, that he has been duly elected and commissioned as such Ordinary, and shall produce to said judge his commission and that he had demanded of said justices, the books and papers belonging to the Court of Ordinary, in their custody and possession, and that the said justices of the inferior court, or a majority of them, fail, neglect or refuse, to deliver up the same to him. And upon such affidavit being made, it shall be the duty of the said judge of the superior court forthwith to issue his writ of *mandamus*, to be directed to the said justices of the inferior court, which shall be served by the sheriff of the county, requiring the said justices, within five days after the issuing the same, to show cause before him, why they have not delivered over to said Ordinary, the said books and papers, as demanded by him. And the said justices of the inferior court failing, neglecting or refusing to show good and sufficient cause, at the return of said *mandamus*, the said judge of the superior court shall forthwith issue against said justices an absolute *mandamus*. And upon their failing forthwith to comply with the same; the judge of the superior court being satisfied of that fact by affidavit of said Ordinary, shall proceed against said justices of the inferior court as in cases of contempt.

*Mandamus nisi.*

*Mandamus absolute.*

7. SEC. VII. That the said Ordinary shall keep his office at the county site, or such other place as is authorized by law; which office shall be open for the transaction of all business at all times, except Sunday: *Provided*, that no will shall be admitted to record, or letters testamentary, or of administration, or of guardianship, or letters dismissory, be granted; or any order for the sale of real estate, or negroes, be granted, except at a regular term of the court.

Office, where kept, always open.

8. SEC. VIII. That the regular terms of said court shall be held on the first Monday in each month except January, which shall be on the second Monday thereof; which shall be opened and attended as the Court of Ordinary has hitherto been.

Regular Term, etc.

9. SEC. IX. That the returns of all elections for Ordinary shall be made to the governor, in the same manner as the returns are now made by law, of elections for the justices of the inferior court; and the person having the largest number of votes for said office, shall be commissioned by the governor. And the person so commissioned shall within ten days after notice is given that said commission has issued, take the oath and give the bond prescribed by this act; and in default thereof, said office shall be declared vacant, by the justices of the inferior court of said county; and the person so failing shall be ineligible to fill said vacancy.

Election of Ordinary.

Must qualify within ten days.

10. SEC. X. That the governor, when he issues said commission, shall also issue a *dedimus* to the justices of the inferior court of the several counties respectively, authorizing them or a majority, to administer the oath and take the bond herein prescribed. And any one or more of said justices, who shall receive said *dedimus* and commission, shall immediately give notice thereof to the person so commissioned.

Governor to issue *Dedimus*.

Duty of J. I. Court.

11. SEC. XI. That notice of every application for leave to sell real estate or negroes, shall be published in some public gazette, weekly for two months, instead of four months, as heretofore required. And all notices of the sale of said property, shall be published in the same manner, forty days after leave is granted, instead of sixty days as heretofore required. Which sale shall be on the first Tuesday in the month, and at the court-house or other place, as now required by law.—[See 125, 133.]

Leave to sell Land and Negroes. Notice of sale, how given.

12. SEC. XII. That any executor, administrator, or administrator *ad collendum*, shall have power to sell all personal property, (other than negroes,) of a perishable nature, after inventory and appraisement; upon notice of said

Sale of perishable property.



sale as may to the Ordinary seem just and proper, provided that at least ten days notice be given.

Vacancy in office of Ordinary, how filled. His duty. 13. SEC. XIII. That whenever any vacancy may occur in said office by death, resignation or otherwise, it shall be the duty of the justices of the inferior court of the county in which such vacancy may happen, immediately thereafter, to order an election to be held, to fill said vacancy, and give twenty days public notice thereof. And every person who may be elected to fill said vacancy, shall be commissioned in the like manner as his predecessor, for the unexpired term of said office; and shall be entitled to demand, have and receive, of and from any clerk of the superior court, who may have acted *ex officio* as Ordinary, any and all records and other papers and things appertaining to said office. And any clerk of the superior court who shall refuse to deliver the same, shall be liable to rule and attachment in the superior court of said county, for contempt: *Provided*, in case of a tie, the justices of the inferior court shall order a new election, in the same manner and way, as in cases of a vacancy.

Ordinary must give bond and security. Conditions of bond. Deputy's bond 14. SEC. XIV. That each and every Ordinary, before he shall enter on the duties of his office, shall give bond and security, in the sum of two thousand dollars, for the faithful discharge of his duties as a clerk, by himself and his deputy. Which bond shall be approved by three justices of the inferior court, and be made payable to the governor, for the time being, and his successors in office; and shall be filed and recorded in the same manner as sheriffs' bonds. And said Ordinary shall have power to take bond and security from his deputy, for the faithful performance of his duty, as such.

Ordinary's oath of office. Deputy's oath. 15. SEC. XV. That the Ordinary elected or to be elected as aforesaid, shall, before he is commissioned and enters on the duties of his office, take and subscribe before the justices of the inferior court of the county of his residence, or a majority of them, the following oath or affirmation: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will well and faithfully discharge the duties of Ordinary for the county of ———, during my continuance in office, according to law; to the best of my knowledge and ability, without favor or affection to any party. And that I will only receive my legal fees of office—so help me God." And each and every deputy appointed under the provisions of this act, shall take and subscribe a similar oath before said justices.

Administrator etc., bond how payable. 16. SEC. XVI. That all bonds relating to the probate of wills, or the administration or guardianship of estates, heretofore required to be payable to the justices of the inferior court when sitting for ordinary purposes, and their successors in office, or to the inferior court or to the justices thereof, under whatever name or style, shall from and after the time at which this act shall take effect, be payable to the Ordinary and his successors in office.

Returns and vouchers. 17. SEC. XVII. That no return of any executor, administrator or guardian, shall be allowed until after the expiration of thirty days from the filing of the same. And it shall be the duty of the Ordinary to record all vouchers offered with said returns, and return said vouchers to said executor, administrator or guardian, on demand for the same. And said Ordinary, for recording such vouchers, shall be entitled to ten cents for every hundred words.

Appeal to the Superior Court allowed. 18. SEC. XIX. That in case either party in said court of ordinary shall or may be dissatisfied with any decision of the said Ordinary thereof, then and in all such cases, such dissatisfied party may, within four days after the decision and judgment of the said Ordinary therein, be allowed to enter an appeal to the superior court, under the same rules and restrictions as are now prescribed by law, for entering appeals from the inferior courts, sitting for ordinary purposes.

Ordinary may not practice in our court. 19. SEC. XX. That it shall not be lawful for the Ordinary, nor any legal partner of said Ordinary, to practice in said court of ordinary, or be retained



as counsel in any cause originating in said Court, and carried by appeal or writ of error, to any higher court. Nor shall such Ordinary, or his legal partner, receive any fee or reward for any service rendered or counsel given in any matter connected with said court, other than the fees authorized by law to said Ordinary. And any Ordinary violating the provisions of this section, or permitting its violation by any legal partner practising in said court before him, shall be guilty of a misdemeanor, and on conviction shall be fined and imprisoned at the discretion of the court; and shall forfeit his commission; and shall be ineligible to re-election: *Provided*, nothing in this section shall prevent said Ordinary from practising in any other cause, in any other court.

20. SEC. XXI. That at the first term of the superior courts of each county, after the election of the Ordinary, it shall be his duty to report to the judge of the said court, the estates in his hands unrepresented, and which devolve upon the clerk of the superior court, or other persons, by the provisions of this act. And also, a statement of the condition of said estates. And it shall be the duty of the said judge to compel the said clerks to take out administration, or guardianship, on the same, if he has neglected or refused so to do; or to appoint a receiver, or guardian, under such rules as he may prescribe. And the said clerk, or such receiver, if such be appointed, shall be subject to such orders in chancery, as may be made from time to time, respecting the management of any estate committed to him. And shall also, account to the Ordinary, in the same manner as other administrators, all his transactions with regard to said estates.

Ordinary must report to Judge Inferior Court.

Clerk's duty and liability.

Rules in chancery.

SEC. XXII. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to render valid all Records made, or other official acts, done in certain cases therein specified.—*Approved Jan. 22, 1852.*

*Whereas*, doubts have been suggested of the legality of all records made, or other official acts, done by persons who were clerks of the court of ordinary, since the passage of an act entitled "an act to alter and amend the sixth section and the third article of the Constitution of the State of Georgia"—

21. SEC. I. *Be it enacted*, That all records made, or other official acts, done by any former clerk of the court of ordinary, since the fifth day of December, 1851, be and the same are hereby made valid to all intents and purposes. And that any exemplification of said records, executed in due form, shall be admissible as evidence in all courts of law and equity in this State.

Certain acts of C. C. O. made valid.

AN ACT to carry into effect the sixth section of the third article of the Constitution, and to amend an act entitled, &c., [act of 1789, see 69,] and to prevent entails.—*Approved Feb. 16, 1799.*

22. SEC. I. From and after the passing of this act, the Inferior Courts in each county, shall have jurisdiction and authority to hear and determine all causes, matters, suits and controversies testamentary, which shall be brought before them, touching the proof of wills. And shall examine and take the proof of wills, grant probate thereof, and shall hear and determine the right of administration of estates of persons dying intestate; and to do all other things touching the granting letters testamentary and letters of administration, according to law and right. And shall appoint its own clerk, who shall be commissioned by the governor. And before he enters on the duties of his office, shall take an oath, well and truly to perform the duties required of him as clerk of the court of ordinary, to be administered by one of the judges thereof.

Ordinary's jurisdiction.

23. SEC. II. All applications for letters of administration shall be made to the clerk of such Court of Ordinary, who shall give notice thereof in one of the public gazettes of this State, and by advertisement at the court-house of such

All applications for letters of Administration



must be made to the Ordinary, who alone, has power to grant them. county, at least thirty days before the sitting of the said Court of Ordinary. And such clerk may at his discretion, grant letters to collect and take care of the effects of the deceased, until the meeting of such court. And the said court shall also grant such letters in all cases where there shall be an appeal, from the determination thereof, to the superior court. And in either case, the person obtaining such temporary letters of administration, shall give bond and security for the faithful performance of the trust reposed in such person or persons.

Ordinary  
must grant  
Marriage  
Licenses.

24. SEC. III. The clerks of the courts of ordinary in the several counties, shall grant marriage licenses, directed to any judge, justice of the inferior court, justice of the peace, or minister of the gospel; to join persons of lawful age, and authorized by the Levitical degrees to be joined together in matrimony. And where such persons intending to marry, shall have the bans of marriage published three times in some public place of worship, it shall be lawful for such judge, justice of the inferior court, justice of the peace, or minister of the gospel, being duly certified thereof, to marry the persons whose bans have been so published. And any person marrying any couple without such license, or publication of such bans, shall forfeit \$500, to be recovered for the use of the academy of the county, by action of debt, in any court having cognizance thereof, in the name of the commissioners of such academy.

Penalty for  
marrying  
persons with-  
out License or  
pub. of bans.  
No entail-  
ment.

25. SEC. V. Estates shall not be entailed.

SEC. VI. So much of the said recited act as comes within the purview of this act, shall be and the same is hereby repealed.

#### LEVITICAL DEGREES.

*Table of kindred and affinity wherein whosoever are related are forbidden in scripture and our laws to marry.*

##### A MAN MAY NOT MARRY HIS

- |                             |                                 |
|-----------------------------|---------------------------------|
| 1. Grandmother.             | 16. Sister.                     |
| 2. Grandfather's wife.      | 17. Wife's sister.              |
| 3. Wife's grandmother.      | 18. Brother's wife.             |
| 4. Father's sister.         | 19. Son's daughter.             |
| 5. Mother's sister.         | 20. Daughter's daughter.        |
| 6. Father's brother's wife. | 21. Son's son's wife.           |
| 7. Mother's brother's wife. | 22. Daughter's son's wife.      |
| 8. Wife's father's sister.  | 23. Wife's son's daughter.      |
| 9. Wife's mother's sister.  | 24. Wife's daughter's daughter. |
| 10. Mother.                 | 25. Brother's daughter.         |
| 11. Stepmother.             | 26. Sister's daughter.          |
| 12. Wife's mother.          | 27. Brother's son's wife.       |
| 13. Daughter.               | 28. Sister's son's wife.        |
| 14. Wife's daughter.        | 29. Wife's brother's daughter.  |
| 15. Son's wife.             | 30. Wife's sister's daughter.   |

##### A WOMAN MAY NOT MARRY HER

- |                                |                                    |
|--------------------------------|------------------------------------|
| 1. Grandfather.                | 16. Brother.                       |
| 2. Grandmother's husband.      | 17. Husband's brother.             |
| 3. Husband's grandfather.      | 18. Sister's husband.              |
| 4. Father's brother.           | 19. Son's son.                     |
| 5. Mother's brother.           | 20. Daughter's son.                |
| 6. Father's sister's husband.  | 21. Son's daughter's husband.      |
| 7. Mother's sister's husband.  | 22. Daughter's daughter's husband. |
| 8. Husband's father's brother. | 23. Husband's son's son.           |
| 9. Husband's mother's brother. | 24. Husband's daughter's son.      |
| 10. Father.                    | 25. Brother's son.                 |
| 11. Stepfather.                | 26. Sister's son.                  |
| 12. Husband's father.          | 27. Brother's daughter's husband.  |
| 13. Son.                       | 28. Sister's daughter's husband.   |
| 14. Husband's son.             | 29. Husband's brother's son.       |
| 15. Daughter's husband.        | 30. Husband's sister's son.        |

NOTE.—The fourth section of the tenth Division of the Penal Code, enacts, that "if any person shall commit Incestuous Fornication, or Adultery; or intermarry within the Leviti-

*cal Degrees, &c.*, the person shall be punished in the Penitentiary, *and the marriage vitiated.*" —*Cobb's Penal Code*, 152. It is important, therefore, that persons of the same blood, or who become related by marriage, should understand this provision of the law.

### *Citation by the Ordinary.*

GEORGIA,—HOUSTON COUNTY.—*Ordinary's Office.*

*To all whom it may concern.*—Whereas, *Charles Smith* of said State and County, applies to the Ordinary for Letters of Administration on the Estate of *John Doe*, deceased, late of said County and State: these are therefore, to cite and admonish, all and singular, the kindred and creditors of said deceased, to be and appear at my office, within the time prescribed by law, and show cause, (if any they have,) why letters of Administration on the Estate of said deceased, should not issue to the applicant.

*Given under my hand and official signature, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary.*

### *Temporary Letters of Administration.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
Houston County. } To *Charles Smith*—*Greeting.*

Whereas, it has been made known to me that *John Doe*, deceased, late of said County, died intestate. And whereas, it has further been made known to me, that said *John Doe*, at the time of *his* death, was possessed of considerable personal property. And whereas, it has been further made known to me, that there is great danger of waste of the said Estate, for the want of due and legal Administration being had on the same. And whereas, by the statutes of this State, the Ordinary has the power of granting Temporary Letters of Administration, &c.

Know all men to whom these presents shall come, that I, *John S. Jobson*, Ordinary in and for the County aforesaid, have this day appointed you, the said *Charles Smith*, Administrator of all and singular, the goods and chattels, rights and credits, of the said *John Doe*, deceased, (temporarily, and until Permanent Letters of Administration on the Estate of said deceased, are granted,) to collect, take care of and preserve from waste, the personal Estate of said *John Doe*, deceased, in terms of the law; to the use, benefit and behoof of those who have a right thereunto. And you, the said *Charles Smith*, will take into your hands and possession, and keep safe from waste, all the goods and chattels, rights and credits, of him the said *John Doe*, deceased, until due and legal Administration can be had on said Estate.

And that you do make, or cause to be made, a true and perfect Inventory of all and singular, the goods and chattels, rights and credits, of the said *John Doe*, deceased. And the same so made, you return into the office of the Ordinary, within the time prescribed by law.

*Witness my hand and seal of office, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary.* [L. S.]



*Temporary Administrator's Bond.*

STATE OF GEORGIA, } We, *Charles Smith* as principal, and *Richard Roe*  
*Houston County.* } as security, acknowledge ourselves held and bound  
 to *John S. Jobson*, Ordinary of said County, and his successors in office,  
 in the sum of *five thousand* dollars, subject to the following condition—

The condition of the above obligation is this—whereas, the above bound *Charles Smith* has *this day* applied for and obtained of said Ordinary, Temporary Letters of Administration of the goods and chattels, rights and credits, of *John Doe*, deceased. Now, should the above bound *Charles Smith*, carefully collect and preserve from waste or loss, all the goods, chattels and effects of the said *John Doe*, deceased, and make, or cause to be made a true and perfect Inventory of all the Estate of said deceased; and return the same to the Court of Ordinary of said County when so required; and do surrender up such Estate and effects, unto the legal and proper Administrator, whenever he shall be thereunto lawfully required so to do, and faithfully perform the trust reposed in him, then this obligation to be void; otherwise to remain in full force in law. This *May 1*, 1859.

Approved—  
 JAMES MACK, J. P.

CHARLES SMITH, *prin'l.* [L. S.]  
 RICHARD ROE, *sec'ty.* [L. S.]

*Permanent Letters of Administration.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
*Houston County.* } *To Charles Smith—Greeting.*

Whereas, *John Doe*, deceased, late of said County, died Intestate, having while he lived and at the time of his death, divers goods, chattels, rights and credits, within the County aforesaid; by means whereof, the full disposition and power of granting the Administration of all and singular, the goods, chattels, rights and credits of the said deceased; and also, a final Dismission from the same, to the Ordinary aforesaid, does of right belong. And said Ordinary, desiring that the goods, chattels, rights and credits of said deceased, may be well and truly administered and legally disposed of, doth hereby grant unto *Charles Smith*, Administrator, full power by the tenure of these presents, to administer the goods, chattels, rights and credits of said deceased, which to him in his lifetime, and at the time of his death, did belong. And to ask, demand, sue for, recover and receive the same. And to pay the debts in which the deceased stood bound, so far forth as his assets will extend, according to law. And then, the balance justly to pay over to the legal heirs and distributees of the said deceased. And the said *Charles Smith*, having given bond and security, and taken the oath, and performed all other requisites required by law, necessary to his just qualification as Administrator, he is, by the Ordinary aforesaid, and by virtue of these presents, ordained, constituted and appointed, Administrator of all and singular, the goods, chattels, rights and credits of said deceased.

*Witness my hand and seal of office, this May 1*, 1859.

JOHN S. JOBSON, *Ordinary.* [L. S.]

*Permanent Administrator's Bond.*

STATE OF GEORGIA, } We, *Charles Smith* as principal, and *Richard*  
*Houston County.* } *Roe* as security, both of the State and County  
 aforesaid, acknowledge ourselves held and bound unto *John S. Jobson*,  
 Ordinary of said County, and his successors in office, in the sum of  
*ten thousand* dollars; subject to the following conditions—

The conditions of the above obligation are these—whereas, said *Charles Smith* hath *this day* been appointed Administrator of the Estate of *John Doe*, deceased, late of said County, and Letters of Administration having issued to him. Now, should the said *Charles Smith*, make a true and perfect Inventory of all and singular, the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge, of the said *Charles Smith*, or into the hands or possession of any other person or persons for him; and the same so made, do exhibit to the Court of Ordinary, when he shall be thereunto required; and such goods, chattels and credits, do well and truly administer, according to law. And do make a just and true account of his actings and doings therein, when lawfully thereunto required, by any Court of said County; and all the balance of the goods, chattels and credits, which shall be found remaining upon the account of the said Administration, (the same being first allowed by the said Court of Ordinary,) shall deliver and pay to such persons, respectively, as are entitled to the same by law. And if it shall hereafter appear that any last Will and Testament was made by the deceased, and the same be proved, according to law, and the Executor obtain a certificate of the Probate thereof; and the said *Charles Smith* do, in such case, if required, render and deliver up the said Letters of Administration, then this obligation to be void; otherwise of force. This *May 1, 1859.*

In open Court—  
 JOHN S. JOBSON, *Ordinary.*

CHARLES SMITH, *prin'l.* [L. S.]  
 RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—Administrators' Bonds must be in "double the amount of the Estate they shall be appointed to administer."

AN ACT to require the Ordinaries of this State to keep a Book in which they shall record all letters Testamentary, Letters of Administration and Letters of Guardianship, and for other purposes.—*Approved March 5, 1856.*

26. SEC. I. *Be it enacted, &c.,* That from and after the passage of All Letters to this act, it shall be the duty of each and every Ordinary of this State, to be recorded. keep a book of record, in which they shall copy all letters testamentary, letters of administration and letters of guardianship; which entry of record shall be made within twenty days after the granting of said letters.

27. SEC. II. That certified copies from the Ordinary's office, of letters testamentary, of administration or of guardianship, shall be used in evidence, in all the courts of law and equity in this State, under the same circumstances in which the original letters would be admissible. Copies admissible in evidence.

SEC. III. [Repeals conflicting laws.]

AN ACT to declare and define the Jurisdiction of Courts of Ordinary in this State, and for other purposes therein mentioned.—*Approved March 5, 1856.*



Jurisdiction of Courts of Ordinary. 28. SEC. I. *Be it enacted, &c.*, That Courts of Ordinary in this State, are, under the constitution and laws of this State, courts of general jurisdiction, as to testate and intestate estates.

C. of O., Courts of general jurisdiction. 29. SEC. II. That all courts of law and equity in this State, when determining on any judgment or order, which the several courts of ordinary in this State have passed or made, or may hereafter pass or make, as to testate and intestate estates, shall hold said Courts of Ordinary to be courts of general jurisdiction, and not courts of limited jurisdiction.

SEC. III. [Repeals conflicting laws.]

AN ACT authorizing Ordinaries of this State, to issue *fi. fas.* for Cost, in certain cases.—*Approved Feb. 28, 1856.*

Ordinary may issue executions for costs. 30. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, that the several Ordinaries of this State, shall upon finding any executor, administrator or guardian in default on the records of said Ordinary; and after notifying such executor, administrator or guardian, to make his or her annual return, as is now required by law; and in case of failure thereof, the said Ordinary shall have power to make out his cost for the same; and issue cost executions against such executors, administrators and guardians, and their securities.

Executions how collected. 31. SEC. II. That such executions shall be collected as other executions in this State.

SEC. III. [Repeals conflicting laws.]

AN ACT for the relief and support of Widows and Orphans, out of the Estates of their deceased Husbands and Parents.—*Approved Dec. 29, 1838.*

Support allowed widow or orphan. 32. SEC. I. *Be it enacted*, That from and after the passage of this act, when any person shall die, leaving a widow and children, or a widow, or child, it shall and may be lawful for the executor or administrator thereof, to allow out of the effects of such deceased person, a reasonable support and maintenance for the space of twelve months next ensuing; immediately after the death of such testator or intestate; notwithstanding any debts, dues or obligations of such testator or intestate.

SEC. II. All laws and parts of laws militating against this act be and the same are hereby repealed.

AN ACT to amend an act for the relief and support of Widows and Orphans, out of the Estates of their deceased Husbands and Parents. Assented to December 29, 1838.—*Approved Feb. 15, 1854.*

Ordinary must allow support to Widow or Orphan. Notice of application must be given. 33. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be the duty of the Courts of Ordinary of the several counties in this State, upon the application of the widow and children, or of the widow or child, of any testate or intestate, to pass an order making the allowance authorized by the first section of the above-recited act: *Provided*, that at least ten days' notice, of the time when such application will be made, is first given to the executor or administrator representing the estate of such testate or intestate: *And provided further*, that said allowance may be made in money or property, or both, at the discretion of the court.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to more effectually provide for the maintenance and protection of Widows and Orphans.—*Approved Feb. 23, 1850.*



34. SEC. I. *Be it enacted*, That from and after the passage of this act, in case any husband shall die leaving a wife and child, or a wife and children, or an orphan child or children, under age; and the whole estate of said deceased, shall not be more than sufficient to pay the debts of said deceased, then and in that case, the said wife and child, or children, or orphan, shall be permitted to hold and enjoy, for their support and maintenance, free from levy and sale for any debt or demand which existed against the husband or father at the time of his death, the sum of one hundred dollars' worth of such effects, as they or their guardians may select, for their welfare and comfort.

\$100 allowed  
Widow and  
Children out  
of insolvent  
estates.

35. SEC. II. It shall in all such cases, be the duty of the clerk of the court of ordinary, to make the valuation and set apart the property which is declared to be exempt from levy and sale under the provisions of this act, and report the same to the court of ordinary, whose duty it shall be to order said report to be recorded on the minutes of said court; and the property contained in said report shall be, and it is hereby declared to be vested in said widow and child, or children, or orphan or orphans, for the purposes herein-before specified.

Ordinary's  
duty.  
Property  
Exempt.

36. SEC. III. Nothing herein contained shall be so construed as to take from widows and orphans, any property and rights now allowed them by law.

Construction  
of this act.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to allow the Widow and Children of deceased persons a support out of the Estate of the deceased, for the term of twelve months after the decease, in cases where no Administration has been granted on the Estate of the deceased; and to ascertain the amount necessary for the support, and set apart the same, and to exempt it from levy and sale for the debts of the deceased, or by an administration; and to vest the title thereof in the family of the deceased.—*Approved Feb. 22, 1850.*

37. SEC. I. *Be it enacted*, That from and after the passage of this act, when any persons shall die, leaving a widow and children, or a widow and child, and no administration is granted by the proper authority, on the estate of the deceased, the widow and child, or children, or either of them, shall be allowed a reasonable support and maintenance, out of the estate of said deceased, for twelve months after the death of said deceased, notwithstanding any debts, dues and obligations of said deceased.

Widow's and  
Orphan's al-  
lowance.

38. SEC. II. It shall be the duty of the justices of the peace of the several militia districts in this State, on the application of the widow of any person deceased, in their respective districts, or the person having the care of the child or children of the deceased, to go to the late residence of the deceased, and assess the sum necessary for the support and maintenance of the family of said deceased, for the term of twelve months; and to set apart that amount in money, or such property as may be selected by the widow, or person having the care of the children of said deceased, if there be no widow; at a fair valuation to be made by the said justices of the peace. And the money or property so set apart, shall be exempt from levy and sale, by virtue of any judgment; and from the control of any administrator of said estate, afterwards appointed to administer the estate of said deceased. And the title thereto shall vest in the family for their support and maintenance.

Ordinary's  
duty.

39. SEC. III. It shall be the duty of the said justices of the peace, to return to the next court of ordinary in their county, a schedule of the property so set apart for the support of the family of the deceased, with the valuation as fixed by them, together with the amount necessary for the support of the family, as determined by them; and the said court of ordinary shall order the same to

Duty of Just-  
ice of the  
Peace.

Must be re-  
corded.



be entered on record, by their clerk, in a book to be kept by him for that purpose.

Fees.

40. SEC. IV. The said justices of the peace shall be paid by the applicant, the sum of one dollar each, for their services; and the clerk of the court of ordinary the same fee for recording the same as he is allowed for recording by law.

SEC. V. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to point out the mode of ascertaining the relief and support to which Widows and Orphans are entitled out of the Estates of their deceased Husbands and Parents, in cases where Letters Testamentary or of Administration, shall hereafter be granted, and for other purposes.—*Approved Feb. 19, 1856.*

Support and maintenance, in certain cases how set apart.

41. SEC. I. *Be it enacted*, That in all cases where letters testamentary or of administration shall hereafter be granted on any estate, it shall be the duty of the Ordinary of the county where said letters were granted, either in term-time or in vacation, on the application of the executor or executors, administrator or administrators, or widow, or the person or persons having the care of the child or children of the deceased, to appoint five discreet appraisers. And it shall be the duty of said appraisers, or a majority of them, to assess the sum necessary for the support and maintenance of the widow and children, or widow or child, or children of the deceased, for the term of twelve months; and to set apart that amount in money, or such property as may be selected by the widow, or person or persons having the care of the children of said deceased. If there be no widow, at a fair valuation to be made by said appraisers. And the money or property so set apart, shall be exempt from levy and sale, by virtue of any judgments, and shall be free from the control of the executor or executors, administrator or administrators of said estate. And the title thereto shall vest in said widow and children, or widow, or child, or children; for their support and maintenance.

Appraisers duty.

Return must be recorded.

42. SEC. II. That it shall be the duty of said appraisers to return to the Ordinary of their county, within three months after their appointment, a schedule of the property, or amount of money, so set apart for the support and maintenance of said widow and children, or widow, or child, or children, and the valuation of the property as fixed by them. And it shall be the duty of the Ordinary to record the same in a book to be kept by him for that purpose; and he shall be entitled to the same [*fee*] for recording the same as is now allowed by law for recording.

Pay of Appraisers.

43. SEC. III. That said appraisers shall be entitled to a reasonable compensation for their services, to be fixed by the ordinary, and to be paid out of the money, or property, set apart as aforesaid.

Household furniture to Widow.

44. SEC. IV. That the said appraisers shall also have power to set apart for the widow, a sufficient amount of the household furniture, for the use of the widow and children; and that the titles of the said furniture so set apart, shall vest in the widow.

Assessment under act of 1850.

45. SEC. V. That when there is but one justice of the peace in the district, said justice and any two freeholders may, on the application of the widow, or children, make the assessment and assignment of property authorized by the act of the General-Assembly of 1850, in relation to the estates of persons without representation by executor or administrator.

AN ACT to allow Widows of such persons as may die Intestate, in this State, in taking their proportionate part of the negro property, to choose and select the same; *Provided*, the same can be done without exceeding in amount their distributive shares.—*Approved Feb. 18, 1854.*

46. SEC. I. That from and after the passage of this act, that the widows of such persons as may die intestate in this State, to be allowed on the distribution of the estates of such intestate, to choose and select their respective portions of the negroes; *Provided*, the same can be done without exceeding their distributive shares.

Widow may select her share of Negroes.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Appointment of Appraisers.*

STATE OF GEORGIA, } Upon the application of *Rachel Roe*, it is ordered,  
*Houston County.* } ed, that *James Jones, William Tims, Thomas West, Samuel Felder and John Smith*, be and they are hereby appointed *Appraisers*, for the purpose of assessing and setting off (to said *Rachel Roe*, widow of *Richard Roe*, deceased, late of said county, and her five children,) out of the Estate of said deceased, support and maintenance, sufficient for said Widow and Children, for the term of twelve months. And also, a sufficient amount of Household Furniture, for the use of said Widow and Children.

*A true extract from the Minutes, this May, 1, 1859.*

JOHN S. JOBSON, *Ordinary.*

### *Return of Appraisers.*

STATE OF GEORGIA, } The undersigned, in the discharge of their duty,  
*Houston County.* } assess the sum of *three hundred* dollars, as necessary for the support of the *Widow and five Children of Richard Roe*, deceased, for twelve months. This sum has been set off in *seven hundred pounds of Bacon, at ten cents per pound. One hundred bushels of Corn, at one dollar per bushel; and thirty dollars' worth of sugar and Coffee.*

And have set apart *three Feather Beds, Bedsteads and Furniture. Two Tables, one dozen Chairs, one dozen Cups and Saucers, one dozen Knives and Forks, and all the Kitchen Furniture of said deceased*, for the use of the Widow and Children. This *May 2, 1859.*

SAMUEL FELDER, }  
 JAMES JONES, } *Appraisers.*  
 JOHN SMITH, }

NOTE.—By making suitable alterations, the above proceedings will answer in each particular case under each particular Act.

AN ACT to amend an act to carry into effect the sixth section of the third article of the constitution of this State.—*Approved Dec. 7, 1805.*

47. SEC. I. *Be it enacted*, That in case either party in said Courts of Ordinary shall or may be dissatisfied with any decision thereof, then and in all such cases, such dissatisfied party may, within four days after the adjournment of the said court, be allowed to enter an appeal, by paying all costs which may have accrued, and giving security to the clerk of said court of ordinary for such further costs as may accrue by reason of such appeal. Which appeal so entered, shall be by the said clerk transmitted to the clerk of the superior court of the county in which such proceedings may take place, at least ten days before the next superior court of said county. And which said superior court shall determine thereon at such term, according to law

Appeal to the Sup. Court allowed.



Temporary Letters may be granted. Only citizens can be Ex'or or Adm'r.

and right. And letters testamentary or of administration, shall not be granted or issued until the decision of such appeal by the said superior court; but the said court of ordinary may, pending such appeal, grant temporary letters to collect the estate of the deceased.

48. SEC. II. No letters testamentary or of administration, shall be granted to any person or persons, who is or are not a citizen or citizens of the United States, residing in the State of Georgia.

SEC. III. All acts heretofore passed, militating against this act, shall be and the same are hereby repealed.

### *Appeal to the Superior Court.*

JOHN DOE  
vs.  
RICHARD ROE. } In the matter of the application of the *Plaintiff* for  
Letters of Administration on the Estate of *Charles Smith*,  
dec.

The *Plaintiff* being dissatisfied with the decision of the Ordinary in the above-stated case. And having paid all costs which have heretofore accrued therein; brings *Samuel Cooks*, and tenders him as security on appeal. And they, the said *John Doe* and *Samuel Cooks*, acknowledge themselves bound to the said Ordinary, and his successors in office, for the payment of such further costs as may accrue in said case, by reason of this appeal. This *May 1, 1859.*

JOHN DOE, *prin'l.* [L. S.]

SAMUEL COOKS, *sec'ty.* [L. S.]

AN ACT to make it the duty of the Clerks of the Court of Ordinary of the several counties in this State to preserve the evidence of legal notices, in certain cases; and in relation to the appointment of Administrators and Guardians, in certain cases.—*Approved Dec. 21, 1839.*

News-papers to be filed.

49. SEC. I. From and after the passage of this act, it shall be the duty of the clerks of the court of ordinary of the several counties of this State, to keep in their respective offices, a regular file of the news-paper in which they may advertise the notices required by law to be advertised.

Subject to inspection.

50. SEC. II. Said news-paper, filed as aforesaid, shall at all times be subject to the inspection of any person interested in any notices published therein.

Letters of Adm'r in what County granted.

51. SEC. IV. In all cases hereafter, letters of administration shall only be granted by the court of ordinary of the county where the deceased resided at the time of his death, if a resident of this State.

Letters of Guardianship, in what Co. granted.

52. SEC. V. In all cases hereafter, letters of guardianship shall only be granted by the court of ordinary, of the county where the minor or ward resided at the time application for letters of guardianship is made, if said minor or ward reside in this State.

SEC. VII. [Repealing section.]

AN ACT to alter and amend the 47th section of the Judiciary system of this State, and pointing out the manner of filling vacancies in the Offices of Clerk of the Superior and Inferior Courts.—*Approved Dec. 19, 1817.*

Coroner or Constable may attend Court.

53. SEC. II. In the absence of the sheriff or his deputy, it shall and may be lawful for the judges of the court of ordinary, to direct said court to be opened and attended by the coroner, or any constable of the county. And they may make a reasonable compensation to the said coroner or constable, for his services.

[AN ACT to confer certain rights upon the Ordinary and School Commissioners of Emanuel County,] and to authorize the adjournment of the Court of Ordinary.—*Approved Feb. 9, 1854.*

54. SEC. IV. That the Ordinary of any county in this State, shall be authorized to adjourn the court of ordinary from time to time, as circumstances or the business of the court may render necessary. May hold adjourned terms.

SEC. V. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to authorize Ordinaries of this State to issue cost *fi. fa.* generally.—*Approved Dec. 11, 1858.*

55. SEC. I. *Be it enacted*, That from and after the passage of this act, the several ordinaries of this State, shall have power to issue cost executions, against all executors, administrators, guardians, and their securities, for all costs that now are, or may hereafter, be due to said ordinaries. Executions for costs may be issued.

56. SEC. II. That such executions shall be collected as other executions in the State. And collected.

SEC. III. [Repeals conflicting laws.]

AN ACT to empower and authorize the Ordinaries of the different Counties of this State, to grant an Order to Executors and Administrators, representing Estates; and Guardians, representing Wards, having wild and scattered Lands, lying and being in different Counties, to sell and dispose of the same at private sale, whenever the interest of the Estate or Ward require such sale.—*Approved Dec. 11, 1858.*

57. SEC. I. *Be it enacted*, That from and after the passage of this act, the ordinaries of the several counties of this State, (on application of any executor, executrix, administrator or administratrix, representing any estate; or guardian, representing any ward, which has, or who has, wild and scattered lands, lying and being in different counties of this State,) shall have power and authority to pass an order authorizing and empowering such executor, executrix, administrator, administratrix, or guardian, to sell such lands at private sale, whenever the interests of such estate or ward, require it: *Provided*, there is no opposition filed in the office of said ordinary, by any legatee or distributee, or nearest friend of such ward, to such private sale. And that all such private sales shall be as legal and binding, as if they had been sold as the law now directs. Ordinary may pass Order, authorizing the sale of wild and scattered lands.

SEC. II. [Repeals conflicting laws.]

## EXECUTOR, ADMINISTRATOR, GUARDIAN.—PART II.

AN ACT to direct Executors and Administrators in the manner and method of returning Inventories and Accounts of their Testators' and Intestates' Estates, and for allowing them and all other persons who shall or may be intrusted with the care and management of Minors' and other Estates, to charge Commissions thereon.—*Approved Feb. 29, 1764.*

*Whereas*, for preventing any fraudulent disposition or embezzlement of the estates of persons deceased, it is highly expedient that executors and administrators should be obliged to render true and perfect inventories and appraisements of the estates and effects of their testators and intestates, come to their hands and possession. *And whereas*, it is also fit and reasonable, that as well executors and administrators, as all guardians and trustees, shall have an allowance for their trouble and care, in the management of estates committed to their trust—

57\*. SEC. I. *Be it enacted*, That from and after the passing of this act,



Executors and Administrators must produce Estates to Appraisers.

all and every executor and administrator, who shall before the ordinary of this province, for the time being, or such person as he shall depute or appoint, qualify him, her or themselves, for the administration of the estate and effects of his, her or their testator or intestate, shall upon oath, be bound to produce and show to the appraisers that shall be appointed by the ordinary for that purpose, or any three or more of them; all and singular, the goods and chattels of his, her or their testator or intestate, as have or shall come into his, her or their, or either of their hands, possession or knowledge. And within sixty days after such his, her or their qualification, shall cause to be made a true and just appraisement, upon oath, of all and singular, the goods and chattels aforesaid; and exhibit, or cause to be exhibited the said appraisement, certified under the hands of any three or more of the appraisers aforesaid, within four months [see 81] after such his, her or their qualification; together with a full and perfect inventory of all and singular the rights and credits of the said testator or intestate; whether the same be in ready money, judgments, bonds or other specialties, or notes of hand; together with a list or schedule of the books of account, of such testator; to which books all parties concerned, shall upon request, and at convenient times, have free access. And every such executor and administrator shall be, and they are hereby made chargeable with the real value of the goods and chattels in the said inventory contained, and with so much of the credits only as he, she or they, after due care and proper diligence, shall recover and receive; in like manner as executors and administrators are made chargeable by the common and statute law of England.

Within sixty days.

Appraisers must return appraisement.

Executors chargeable with real value.

[The oaths of executors and administrators are afterwards prescribed more concisely in the act of 1792, and this section is therefore omitted. The oath to be taken for the execution of a will, whether by an executor named therein, or by an administrator with the will annexed, will be found in 84; and the oath of administrators, where there is no will, in 86. It may however, not be improper to call the attention of executors and administrators to the following passages containing a succinct outline of their duties; although they are not now to be sworn to the performance of them—

“And that you will produce to, show and inform the appraisers that shall be appointed by the ordinary, all and singular, the goods and chattels of the deceased as already have, or shall before the day of making the appraisement, come to your hands, possession or knowledge.

“And directing them to make a true and perfect inventory, whether the same be in ready money, judgments, bonds or other specialties, or notes of hand; together with a list or schedule of the books of account of such testator and intestate person; and exhibit or cause to be exhibited, the said inventory and schedule; together with the appraisement of the said deceased's goods and chattels, certified under the hands of three or more of the appraisers aforesaid.”]

*And whereas*, a custom hath prevailed among executors and administrators, of taking estates, or some part thereof, at the appraisement, when such appraisement hath often been under the real value; for prevention whereof for the future—

Executors and Administrators accountable for real value of Estates.

58. SEC. III. *Be it enacted, &c.*, That no executor or administrator shall hereafter be permitted to take any estate, or any part thereof, at the appraisement; and that no appraisement to be made as aforesaid, shall be binding or conclusive, either upon the creditors, legatees, next of kin, or other person interested in such estate; or upon the executors or administrators, but all and every such executor and administrator shall be chargeable and accountable for the true value of such estate, any practice to the contrary notwithstanding.— [See 81.]



59. SEC. IV. All intended sales of goods and chattels, belonging to testators or intestates, shall be published in two or more public places in the parish [*county*] where such effects are to be sold, and in the gazette, at least forty days before the day of such intended sale. Sales, how advertised.

60. SEC. V. In case any person in the province shall hereafter happen by his will to appoint his debtor to be his executor, such appointment shall not, in law or equity, be construed or deemed to be a release or extinguishment of any debt due to the testator, unless the testator shall in his will expressly declare his intention to devise, bequeath, or release such debt; any law, usage or custom to the contrary notwithstanding. Debtor appointed ex'r not released from previous debt.

61. SEC. VI. No appraisers that shall hereafter be appointed to appraise any testator's or intestate's goods and chattels, shall enter upon that office before they shall have taken the following oath, before one of his majesty's justices of the peace, of this province, [*county*,] who is hereby empowered to administer the same: "You, A B; C D; E F; do swear, that you will make a just and true appraisement of all and singular, the goods and chattels (ready money only excepted) of G H, deceased, as shall be produced by J K, the executor or administrator of the estate of the said G H, deceased. And that you will return the same, certified under your hands, unto the said J K, executor or administrator, within the time prescribed by law." Appraiser's oath and duty.

62. SEC. VIII. No letters of administration shall hereafter be granted by the ordinary of this province [*State*] to any person or persons whomsoever, as principal creditor or creditors to any intestate, but upon special trust and confidence; and for the benefit of all and singular, the rest of the creditors. And that all debts of an equal nature shall be discharged by such administrator or administrators in average and proportion, as far as the assets of the intestate shall extend. And that no preference shall be given amongst the creditors in equal degree. And that every such administrator and administrators shall be obliged to sue for such debts which he or they may reasonably expect to recover; or at the request and proper charges of any of the creditors of the intestate, assign and empower them, or any of them, to sue for the debts outstanding to the estate of such intestate; any law, usage or custom, to the contrary notwithstanding. Duty of principal creditor when constituted Administrator.

*And*, that no creditor or creditors, to be appointed administrator or administrators in trust, as herein-before mentioned, may retain in his or their hands, the moneys he or they shall receive by virtue of such administration, longer than necessary:— Must make distribution.

63. SEC. IX. That every such administrator or administrators, shall within twelve months after the death of his or their intestate, or after his or their obtaining administration thereon, make a dividend of the moneys arising from such intestate's estate and effects, to and among the several creditors, in like proportion as afore-mentioned. And in case such estate and effects shall not then be wholly divided, a second dividend thereof shall be made within two years from the death of the intestate; which second dividend shall be final, unless any suit shall be then defending, or any part of the intestate's estate standing out; or unless some future estate of the intestate shall afterwards come to the hands of such administrator or administrators; in which case he or they shall, as soon as may be, convert such future estate into money; and shall within three months after divide the same; to which effect it shall be inserted in the condition of the bond to be given as afore-mentioned, on obtaining letters of administration. Distribution to be made in twelve mo's.  
Second distribution in two years.  
Final distribution in three months.

64. SEC. X. Every executor and administrator who shall not within the time aforesaid, or within such further or other reasonable time as the ordinary shall think fit to give, make and return into the secretary's office [*ordinary's office*] aforesaid, such inventory and appraisement as is herein-before directed to be made and returned; and who shall make default in mentioning or inserting Liability of defaulting executor and administrator.



therein all or any of the credits or effects of his, her or their testator, or intestate as aforesaid, which shall come into their hands to be administered; every such executor or administrator shall be, and they and each of them, are hereby made chargeable with and subject to the payment of all and singular, the said testator's and intestate's debts, legacies and bequests, in the same manner as executors of their own wrong, are subjected and made chargeable by the common or statute law of England.

Two and a half per cent. allowed executors and administrators.

65. SEC. XI. It shall and may be lawful to and for all and every executor and administrator, guardian and trustee, for his, her and their care, trouble and attendance, in the execution of their or either of their several duties and trusts, to take, receive or retain, in his or their hands, a sum not exceeding fifty shillings for every hundred pounds, which he, she or they shall hereafter receive, except on the appraised value of any estate, that shall come into their hands. And the like sum of fifty shillings for every hundred pounds which he, she or they shall pay away in debts, legacies or otherwise, (excepting also, the delivering up any such estate to the person or persons entitled to the same, during the course and continuance of their, or either of their management or administration,) and so in proportion for any sum less than one hundred pounds:

Ten per cent. allowed on all interest made.

*Provided nevertheless*, that no executors or administrators, guardian or trustee, shall where they have power so to do, for his, her or their trouble in letting out and lending any sum or sums of money upon interest, and again receiving the moneys so lent and let out, be entitled to receive, take or retain, any sum exceeding the sum of twenty shillings for every ten pounds for all sums arising by moneys lent to interest, so to be by them received, and in like proportion for a larger or lesser sum: *And provided also*, that no executor, administrator, guardian or trustee, who is or may be creditors of any testator or intestate, or to whom is or may be left or bequeathed any sum or sums of money, or other estates or effects, shall be entitled to any reward or commissions for the payment or retaining to themselves any such debts or legacies; any law, usage or custom, to the contrary notwithstanding.

Not allowed commissions in certain cases.

But as it may be very difficult to ascertain the proper and adequate allowance to be made in all cases, and as the sums herein-before allowed may not be sufficient compensation for the care, trouble and pains which executors, administrators, guardians or trustees may take in the management of their respective trusts, in some particular cases —

Additional compensation, how recov'd.

66. SEC. XII. That if any executors, administrators, guardians or trustees, who shall have had extraordinary trouble in the management of the estates under their care, and shall not be satisfied with the sums herein-before mentioned, such executors, administrators, guardians or trustees, shall and may be at liberty to bring an action in the general court of pleas [*superior court*] for their services. And the verdict of the jury and judgment of the court thereupon, shall be final and conclusive in such cases: *Provided always*, that no verdict shall be given for more than fifty shillings per cent. over and above the sums allowed by this act.—[See 178.]

How commissions to be divided among executors, etc.

67. SEC. XIII. The commissions given by this act shall be divided among executors, administrators, guardians and trustees, according to the proportion of the services by them respectively performed, to be rated and settled by the chief justice and two of the justices of the general court of pleas, in case the executors, administrators, guardians and trustees, cannot agree among themselves concerning the same.

68. SEC. XIV. This act shall be and continue in force for the term of seven years, and from thence to the end of the next session of Assembly, and no longer.—[*Made perpetual by the act of 1784.*]

*Warrant of Appraisement.*

STATE OF GEORGIA, }  
 Houston County. } By *John S. Jobson*, Ordinary of said County.  
 To *John Doe, Richard Roe, Thomas Thompson, James M. Tait and Robert West*—Greeting.

These are to authorize and empower you, or a majority of you, whose names are above written, to attend and appraise the goods and chattels of *William Sill*, deceased, (in dollars and cents;) so far as the same shall be produced to you by *Walter Hopkins*, Administrator of said deceased; or shall come to your knowledge, or sight, (ready money excepted.) You having first taken an oath before some officer authorized to administer oaths, well and truly so to do. A certificate of which you are required to return, with the Appraisement. And when the same you have appraised, you are to return an Inventory thereof, signed by a majority of you, into my Office, within the time prescribed by law, together with this warrant.

*Witness my hand and seal, this May 1, 1859.*

JOHN S. JOBSON, Ordinary. [L. S.]

*Inventory and Appraisement.*

Inventory and Appraisement of the Estate of *William Sill*, deceased.

No. 1.	Joe, a Negro man, valued at	- - -	\$ 800 00
2.	Edmund do.	do. - - -	700 00
3.	Lucy, a woman,	do. - - -	500 00
4.	Black Horse,	do. - - -	100 00
5.	Red Cow,	do. - - -	15 00
6.	Twenty head Sheep,	do. - - -	40 00
7.	Eighty head Hogs,	do. - - -	150 00
8.	Wagon,	do. - - -	100 00
9.	Ten Plough Hoes,	do. - - -	20 00
10.	Nine Axes,	do. - - -	18 00
11.	Five pair Trace Chains, valued at	-	5 00
12.	One note of hand given by William Wood, dated Nov. 1, 1857, payable in ten days,	-	300 00
			<hr/> \$2748 00

We do certify, that as far as was produced to us by the *Administrator*, or as came to our knowledge, the above contains a true Appraisement of the goods, chattels and credits of the Estate of *William Sill*, deceased; to the best of our judgment and understanding.

*Given under our hands and official signatures, this July 10, 1859.*

JOHN DOE,  
 RICHARD ROE,  
 THOMAS THOMPSON,  
 JAMES M. TAIT,  
 ROBERT WEST, } Appraisers.

I do hereby certify that the above Appraisers were sworn to perform their duty, according to law. This *May 1, 1859.*

JOSHUA RAY, J. P.



*Inventory and Schedule of Money, Books of Account, &c., of  
William Sill, deceased.*

No. 1. Cash on hand, in specie,	- - -	\$100 00
2. do. do. bills, Bank of S. Georgia,	- - -	100 00
3. Judgment against Robert Pool,	- - -	50 00
4. Bond of William Lewis,	- - -	100 00
5. Book of Blacksmith's accounts for 1857,	- - -	200 00
6. Lumber accounts for 1857,	- - -	50 00
7. Sundries,	- - -	25 00

July 10, 1859.

\$625 00

WALTER HOPKINS, *Administrator.*

NOTE.—The Inventory and Appraisement must be returned to the Ordinary within three months.

*Administrator's Sale.*

NOTICE.

STATE OF GEORGIA, } On the *fifteenth* day of *October* next, will be sold  
Houston County. } at the residence of the late *William Sill*, deceased,  
a portion of the perishable property of said deceased, consisting of *one Black Horse, one Bay Horse, one Grey Horse, one Red Cow, one Wagon, six Plough Hoes, five Club Axes, and four pair Trace Chains.* Terms of sale—purchasers will be required to give Notes with security, for amounts exceeding *five* dollars, to become due the *first* day of *January* next; all under that sum cash. The sale to continue from day to day until all the property is sold. *August 1, 1859.*

WALTER HOPKINS, *Administrator.*

AN ACT to carry into effect the sixth section of the fourth article of the Constitution, touching the Distribution of Intestates' Estates; directing the manner of granting Letters of Administration, Letters Testamentary, and Marriage Licenses.—*Approved Dec. 23, 1789.*

Rules for granting Administration. 69. SEC. II. The same rules shall obtain in regard to the granting letters of administration on intestates' estates, as are before mentioned for the distribution thereof. And should any case arise which is not expressly provided for by this act, respecting intestates' estates, the same shall be referred to and determined, by the common law of this land, as it hath stood since the first settlement of this estate, except only that real and personal estate shall always be considered, in respect to such distribution, as being precisely on the same footing. And in cases of inter-marriage since the 22d day of February, 1785, the real estate belonging to the wife shall become vested in and pass to the husband, in the same manner as personal property doth. And in case of the death of the husband thereafter intestate and without will, the said estate shall descend and become subject to distribution, in the same manner as personal property.

Real and personal Estate of wife pass into husband.

AN ACT to authorize suits to be instituted against securities to Executors', Administrators' and Guardians' Bonds, in the same action with the principal thereto.—*Approved Dec. 13, 1820.*

Whereas, it has been decided by the superior courts of this State, that suit cannot be instituted against any security or securities to any executor's, administrator's or guardian's bond, until the principal or principals to such bond, shall have been sued to insolvency; whereby great injury to the interests of heirs, distributees and others may accrue; for remedy whereof—

70. SEC. I. *Be it enacted*, That from and after the passing of this act, any and all security and securities to any executor's, administrator's or guardian's bond, shall be considered as joint, or joint and several obligors, as the case may be, with the principal or principals in said bond, so as to authorize any heir or heirs, distributee or distributees, administrator *de bonis non*, and others concerned, to sue such principal or principals, and security or securities to such bond, or either of them, in the same action: *Provided always*, that the principal in said bond, if within the limits of this State, shall be first sued, or shall be sued in the said action, with the security or securities, and shall be distinguished in said action as principal, if sued as aforesaid. Any law, usage or custom, to the contrary notwithstanding.

Security to Executor's, Administrator's and Guardian's bonds, sued in same action with principal.

71. SEC. II. In all cases where a judgment shall be obtained in conformity to the foregoing section, execution shall issue against the principal and his or their security or securities, or such of them as judgment may have been obtained against, which execution shall be levied on the property of the principal first. And in case such property should be insufficient to satisfy said execution; or in case no property can be found within the county where such execution shall issue, the balance or whole of such execution, as the case may be, shall be levied on and collected out of the property of the security or securities, or either of them. And in all cases when the amount or any part thereof, shall be paid by the security or securities, such security or securities shall have the use and control of the execution, to remunerate him or themselves, as is customary in such cases.

Execution to be first levied on the property of the principal. When paid by security, he to have control of *fi. fa.*

72. SEC. III. This act shall not extend to bonds heretofore executed.

This act prospective.

AN ACT to regulate the mode of suing the Bonds of Executors, Administrators and Guardians.—*Approved Jan. 15, 1852.*

73. SEC. I. *Be it enacted*, That upon the rendition of a judgment in favor of a party against an executor or administrator, upon any liability of the decedant, and a return of *nulla bona* by the sheriff or other officer authorized to make the same, the said party may, at once, proceed to sue the bond of the administrator or executor, and may recover judgment against the principal and his securities in the same action. And if the principal has removed beyond the limits of this State, or has departed this life, and has no legal representative, then he may sue the sureties on said bond.

Execution against principal returned *nulla bona*, suit may be instituted against principal and security.

74. SEC. II. That when any executor or administrator shall fail to settle and account with any distributee or legatee of the estate he represents, it shall be lawful for such distributee or legatee to institute his suit upon the bond of such representative, in the first instance, and to recover judgment against the principal and his sureties, without a suit against the administrator or executor in his representative character.

How legatee and distributee may sue.

75. SEC. III. That when any guardian shall fail or refuse to settle and account with his ward, upon his coming of age, such ward may institute his suit, in the first instance, against his guardian and sureties, without first suing the guardian.

How Ward may sue.

76. SEC. IV. That when in any of the before-mentioned cases, the administrator, executor or guardian shall remove or reside beyond the limits

Sureties of non-resident



Administra- of this State, or shall place himself in such a situation as that by the laws  
tor, Executor of this State, an attachment would lie against a debtor, it shall be lawful  
or Guardian may be sued for a party in interest to institute his suit against the sureties of the bond  
in the first of such administrator, executor or guardian, in the first instance, without  
instance. a judgment against either, in his representative character.

Property of 77. SEC. V. That when judgment shall be obtained against principal  
principal to and sureties, as aforesaid, the property of the sureties shall not be levied  
be first on until that of the principal shall be exhausted, which shall be evidenced  
exhausted. by a return of *nulla bona*. And that all laws militating against this act,  
be and the same are hereby repealed.

AN ACT to explain and amend an act entitled "an act to regulate the  
mode of suing the Bonds of Executors, Administrators, and Guardians,"  
approved January 15th, 1852.—*Approved March 5, 1856.*

*Whereas*, it was the meaning and intention of the legislature, in the  
passage of the above-recited act, to give to creditors the same ample  
remedy against executors, administrators and guardians, as is thereby  
given to legatees, distributees and wards, and which was omitted to be  
done in said act; for remedy whereof—

Sureties may 78. SEC. I. *Be it enacted*, That when any executor, administrator or  
be sued in guardian shall remove from this State; or place himself or herself in such  
first instance. a situation as by the laws of this State an attachment would lie against a  
debtor, it shall be lawful for any person or persons having demands against  
any such executor, administrator or guardian, in such representative char-  
acter, to institute his suit against the sureties upon the bond of such  
executor, administrator or guardian, in the first instance, and without first  
obtaining a judgment against him, her or them, in his, her or their repre-  
sentative character.

Pending suits 79. SEC. II. That all suits heretofore commenced in any of the courts  
not to be of this State, and now pending therein, upon the bond of any executor,  
dismissed. administrator or guardian, shall not be dismissed, or non-suited, by reason  
of no judgment having been obtained against such executor, administrator  
or guardian, in his or her representative character. And if any such suit  
has been dismissed, or non-suited, since the passage of the before-recited  
act, the same may be reinstated by order of the court, upon motion of the  
plaintiff in such caus; eand in either case shall stand for trial in such court  
upon its merits, as fully as though no law or usage heretofore existed,  
requiring suits to be first brought, or judgment obtained, against such  
executor, administrator or guardian, in his, her or their representative  
character: *Provided*, that if any defendant in such bond shall state to the  
court that he is not so well prepared for trial in consequence of this act,  
as he otherwise would be, a continuance of said cause may be granted by  
the court, until the next term thereof.

Continuance  
allowed.

SEC. III. [Repeals conflicting laws.]

AN ACT to prescribe the manner in which service may be perfected on  
Executors and Administrators, under the circumstances therein men-  
tioned.—*Approved Dec. 22, 1857.*

How service 79\*. SEC. I. In all cases where there are two or more administrators or  
may be per- executors upon an estate, and one or more of such administrators or  
fected upon executors shall remove without the limits of this State, service of any suit  
Administra- or process, upon those remaining in the State, shall be as effectual and  
tor, etc. complete, for all purposes whatever, as though service had been made  
upon all such administrators or executors.

SEC. II. [Repeals conflicting laws.]



AN ACT to be entitled an act to protect the Estates of Orphans, and to make permanent provision for the Poor.—*Approved Dec. 18, 1792.*

*Whereas*, there is no law in this State which sufficiently points out the manner in which the Estates of deceased persons shall be ascertained, and the duty of Executors and Administrators prescribed, whereby Orphans and others are injured in their just rights; for remedy whereof—

80. SEC. I. *Be it enacted, &c.*, That every executor and administrator shall annually, whilst the estate shall remain in his or their care or custody, on the first day of January [*first Monday in July, see 188,*] or within ten days thereafter, render to the register of probates [*ordinary*] in the county in which they obtained probates of will or letters of administration, a just and true account, upon oath, of the receipts and expenditures of such estates the preceding year; which, when examined and approved, shall be deposited with the inventory and appraisement, or other papers belonging to such estate, in said office, there to be kept for the inspection of such persons as may be interested in the said estate. And that no charge shall be made for such search and inspection by persons interested. And if any executor or administrator shall neglect to render such annual accounts, he shall not be entitled to any commissions for his trouble in the management of said estate; [*see 190,*] and shall moreover, be liable to be sued for damages by any person or persons interested in said estate. [Here follows a passage directing executors and administrators already appointed, to render an account within twelve months, which is omitted as temporary.] And in cases where any person shall die intestate and appoint an executor or executors to his will, against which executor or executors there shall be any charge of neglect or malpractice, by any devisee, legatee or creditor, that the superior court shall hear and determine such charge and complaints, and if the judge of such court shall determine in favor of the application, then and in such case the judge of the court shall order and direct that the executor so complained of shall give security, in the discretion of the court, for the faithful execution of the trust.—[*See 104.*]

Annual returns must be made.

Executor, &c. failing to make, loses his commissions.

Delinquent Ex'r, &c.

Sup. Court may compel Executor to give security.

81. SEC. II. When any will shall be proved, or application is made for administration of the estate of any person dying intestate, the register [*ordinary*] shall direct the executors or administrators to make out an exact inventory of the personal estate of the deceased, and shall appoint three or more reputable freeholders, who shall appraise the same on oath; which inventory and appraisement shall be returned within three months [*see 57,*] into the register's [*ordinary's*] office. And every appraisement made as aforesaid, may be given in evidence in any action against such executors or administrators, to prove the value of the estate, but shall not be conclusive if it shall appear on the trial of the cause, that the estate was really worth, or *bonâ fide* sold, for more or less than such appraisement.—[*See 58.*]

Appraisement in what time made. In no way conclusive.

82. SEC. III. When any person shall make a will in writing without appointing any executor or administrator therein; or such executor or executors shall refuse to qualify, the register of probates of the county wherein such will shall be proved, [*the ordinary*] shall on application, grant letters of administration with the will annexed, to such person or persons as would have been entitled thereto if the deceased had died intestate. And if any person shall die intestate, the register [*ordinary*] of the county wherein the will of such person, had he left one, would have been proved, shall grant letters of administration to them who would have been entitled thereto.

Where a will is made and no Executor appointed, who entitled to Administer.

83. SEC. IV. If any person having in possession the will of a deceased



Person sup- person, shall neglect to produce the same to be proved, upon application pressing Will, to the superior court of the county where such will ought to be proved, may be fined process as for contempt shall issue, and the person shall be fined and imprisoned. and imprisoned until the will shall be delivered.

Oath of 84. SEC. V. Every executor or administrator with the will annexed, Executor and at the time of proving the will or granting administration, shall take the Administrator following oath: "I do solemnly swear that this writing contains the true with the Will last will of the within named A B, deceased, so far as I know or believe. annexed. And that I will well and truly execute the same, by paying first the debts and then the legacies, contained in the said will, as far as his goods and chattels will thereunto extend, and the law charge me. And that I will make a true and perfect inventory of all such goods and chattels—so help me God."

Condition of 85. SEC. VI. And the administrator with the will annexed, shall enter bond of into bond with good and sufficient security, in a sum equal to the value of Adm'r with the Will the estate, at least, [see 198;] the condition of which bond shall be in the annexed. form following, to wit: "The condition of this obligation is such, that if the above bound C D, administrator with the will annexed, of the goods, chattels and credits of E F, deceased, do make, or cause to be made, a true and perfect inventory of all and singular, the goods, chattels and credits of the said deceased, which have or shall come to the hands or possession or knowledge of the said C D, or into the possession of any other person for him. And the same so made, do exhibit to the superior court of the county, or to the register of probates [*ordinary*] thereof, at such time as he shall be thereunto required by the said court or register, [*ordinary*.] And the same goods, chattels and credits, do well and truly administer, according to law; and make a just and true account of his actings and doings, when by law required; and further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the said goods, chattels and credits will extend or the law require, then this obligation to be void; else to remain in full force." Which bond shall be made payable to the register of probates [*ordinary*] for the Bond to whom payable. county, and his successors in office; and recorded in the clerk's office of Where re- corded. How sued upon. the superior court; and may be sued for, from time to time, by any person injured by the breach thereof, until the whole penalty be recovered. And damage sustained, being assessed on such suit by the verdict of a jury, may be levied by execution, and paid to the party for whom they were assessed.

Oath of Ad- 86. SEC. VII. Every administrator, when letters are granted to him, ministrator. shall take the following oath or affirmation, as the case may be, before the register of probates, [*the ordinary*.:] "I do solemnly swear, or affirm, that A B, deceased, died without any will, as far as I know or believe; and that I will well and truly administer on all and singular, the goods and chattels, rights and credits of said deceased; and pay all his just debts, as far as the same will extend and the law require me. And that I will make a true and perfect inventory of all and singular, the goods and chattels, rights and credits; and a just return thereof, when thereunto required—so help me God."

Administra- 87. SEC. VIII. And such administrator shall also enter into bond with tor's Bond. good security, to be approved by the register, in a sum equal to the full value of the estate, [see 198,] with a condition following, to wit: "The condition of the above obligation is such, that if the above bound A B, administrator of the goods, chattels and credits of C D, deceased, do make a true and perfect inventory of all and singular, the goods, chattels and credits of the said deceased, which have or shall come to the hands,



possession or knowledge of the said A B ; or into the hands or possession of any other person or persons for him. And the same so made, do exhibit into the said court of —, [*ordinary*,] when he shall be thereunto required. And such goods, chattels and credits, do well and truly administer, according to law ; and do make a just and true account of his actings and doings thereon, when required by the superior court or register of probates for the county. And all the rest of the goods, chattels and credits which shall be found remaining upon the account of the said administration, (the same being first allowed by the said court,) shall deliver and pay to such persons respectively, as are entitled to the same law. And if it shall hereafter appear that any last will and testament was made by the said deceased, and the same be proved before the court, and the executors obtain a certificate of the probate thereof, and the said A B do in such case, if required, render and deliver up the said letters of administration, then this obligation to be void ; else, remain in full force.” Which bond shall be made payable to the register of probates for the county in which the same shall be given, and to his successors in office, and recorded in the clerk’s office of the superior court ; [*ordinary’s office, see 148,*] and may be sued in like manner as is prescribed in the preceding clause of this act, in the case of bonds given by executors with the will annexed. And in case the register shall fail to take bond with sufficient security as aforesaid, such register shall be liable to be sued for all the damages arising from such neglect, by any person or persons interested in the estate. If the sureties for administrators conceive themselves in danger of being injured by such suretyship, they may petition the superior court of the county wherein they stand bound, for relief ; which court shall summon the administrator to appear, and thereupon, make such order or decree as shall be sufficient to give relief to the petitioner. [*See 104.*]

Conditions.

How payable.

Ordinary failing to take bond, liable.

Security may be relieved.

88. SEC. IX. [If any widow, after having obtained letters of administration, shall marry again, it shall be in the discretion of the judge of the superior court, to revoke the administration to her granted, or join one or more of the next of kin to the intestate, in the administration with her. —*See 146.*]

Widow marrying again.

89. SEC. X. The debts due by any testator or intestate, shall be paid by executors and administrators in the order following, viz.: funeral and other expenses of the last sickness, charges of probate and will, or of the letters of administration ; next, debts due to the public ; next, judgments, mortgages and executions, the eldest first ; next, rent ; then bonds or other obligations, and lastly, debts due on open accounts. But no preference whatever shall be given to creditors in equal degree, where there is deficiency in assets, except in cases of judgment ; mortgages that shall be recorded, from the time of recording, and executions lodged in the sheriff’s office, the eldest of which shall be first paid, [*see 230,*] or in those cases where a creditor may have a lien on any part of the estate. Every executor or administrator shall give six weeks’ notice, by advertisement in one of the public gazettes in this State, or at three different places of the most public resort in the county, for creditors to render an account of their demands ; and they shall be allowed twelve months to ascertain the debts due to and from the deceased, to be computed from the probate of the will or granting letters of administration. And creditors neglecting to give in a state of their debts, within the time aforesaid, the executors or administrators shall not be liable to make good the same ; nor shall any action be commenced against any executor or administrator for the recovery of the debts due by the testator or intestate, until twelve months after such testator or intestate’s death.—[*And see next Act.*]

Order in which debts are to be paid.

Notice to debtors and creditors must be given.

Creditors neglecting to give in their debts, &amp;c.



Executors in  
their own  
wrong liable.

90. SEC. XI. All and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall waste or convert any goods, chattels, estates or assets of any person deceased, to their own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living.—[See 100.]

AN ACT to amend an act entitled “an act to protect the Estates of Orphans, and to make permanent provisions for the Poor, approved December 18, 1792.—*Approved Dec. 11, 1858.*

Debts to  
certain em-  
ployees to be  
ranked as first  
in order.

91. SEC. I. That to the debts due by any testator or intestate, by said act directed to be paid first in order, shall be added the wages of any superintendent, overseer, or white laborer, upon any farm of said testator or intestate; whether their contract be written or parol. All laws to the contrary notwithstanding.

### Annual Return.

*John Sanders, Ex'r in account with the Estate of John Stiles, dec.*

Dr.			Cr.		
1859.—July 1. To amount			1859.—July 1. By cash		
of William Wood's Note, \$300			paid Ordinary, for Let-		
			ters, voucher number 1, \$3 00		
&c.            &c.            &c.			&c.            &c.            &c.		

In person appeared before the undersigned, *John Sanders*, Executor of the last Will and Testament of *John Stiles*, dec., who being duly sworn saith that the above Return is just and true, as it stands stated.

Sworn to and subscribed,  
before me, this *July 3*, 1859. }

*John S. Jobson, Ordinary.*

JOHN SANDERS.

NOTE.—The foregoing is the form of an Annual Return, to be made on oath, by an Executor, Administrator and Guardian, to the Court of Ordinary. It is proper here to say, that every Executor, Administrator and Guardian should take a receipt for each payment made by him, out of the money of the Estate he represents, expressing the amount in letters, not in figures, and particularly on what account; and to state the same to be received of him as Executor, Administrator or Guardian.

A Security may verify Annual Returns, in the absence of his Principal.

### Executor required to give Security.

STATE OF GEORGIA, }  
*Houston County.*

To the Court of Ordinary of said County.

The Petition of *John Doe*, one of the Legatees of *Richard Roe*, deceased, late of said County, sheweth that *John Sanders*, Executor of the Will and Testament of said *Richard Roe*, deceased, is neglecting the interest of the Legatees of said Will, (or is guilty of malpractice in the management of said Estate,) in this, to wit: [*here set out fully and at large the acts of neglect or malpractice.*] Wherefore, your Petitioner prays that process may issue, requiring the said *John Sanders*, Executor as aforesaid, to be and appear at the next Court of Ordinary, to be held in and for the County aforesaid, on the first Monday in *February* next, then and there to show cause why he should not be required to

give security for the faithful administration of said Estate. This *January 1, 1859.*

SIMON WAKE, *Pl'ff's Att'y.*

NOTE.—A copy of this Petition must be served on the Defendant.

### *Rule Nisi.*

COURT OF ORDINARY.—*January Term, 1859.*

It appearing by the petition of *John Doe*, one of the *Legatees* of *Richard Roe* deceased, that *John Sanders*, Executor of the Will and Testament of said *Richard Roe*, deceased, is guilty of [*here insert the neglect or malpractice complained of, fully and at large.*] It is therefore ordered, that said *John Sanders*, Executor as aforesaid, be and appear at the next Court of Ordinary, to be held in and for said County, on the first Monday in *February* next, then and there to show cause why he should not be required to give security for the faithful administration of the Estate of said *Richard Roe*, deceased, or his Letters Testamentary be revoked. And it is further ordered, that a copy of this rule be served on said *John Sanders*, twenty days before the next Term of this Court.

*A true extract from the Minutes of said Court.*

JOHN S. JOBSON, *Ordinary.*

### *Rule Absolute.*

COURT OF ORDINARY.—*February Term, 1859.*

Whereas, a rule *Nisi.* was granted at the *January Term* of this Court, made returnable to the present Term, calling upon *John Sanders*, Executor of the Will and Testament of *Richard Roe*, deceased, to show cause, (for certain reasons in said rule *Nisi.* expressed and set forth,) why he, the said *John Sanders*, Executor as aforesaid, should not give security for the faithful administration of said Estate, or his Letters Testamentary be revoked. And whereas, upon the hearing of said cause, it appeared to the Court that said *John Sanders*, Executor as aforesaid, was neglecting and mismanaging the effects of said Estate, as in said rule *Nisi.* set forth and shown: whereupon said Executor was required to give Bond and security, for the sum of *five thousand dollars*, for the faithful management of said Estate. And whereas, said Executor fails and refuses to give the Bond and security, required as aforesaid, it is therefore, hereby ordered and adjudged, that the Letters Testamentary, heretofore issued to said *John Sanders*, as Executor as aforesaid, on the *first day of January*, eighteen hundred and *fifty-six*, be and they are hereby cancelled and revoked, and that said *John Sanders*, be and he is hereby dismissed from the further management of said Estate, as Executor, as aforesaid.



*Bond of Administrator with Will annexed.*

STATE OF GEORGIA, } We, *John Sanders*, principal, and *Richard Roe*,  
*Houston County.* } security, hereby acknowledge ourselves bound  
 unto *John S. Jobson*, Ordinary of said County, and his successors in  
 office, in the sum of *five thousand dollars*. For the payment of which,  
 we bind ourselves, our heirs, executors and assigns. This *May 1*,  
 1859.

[For the conditions of the Bond, see 85.]

Approved—  
*James Mack, J. P.*

JOHN SANDERS, *prin'l.* [L. S.]  
 RICHARD ROE, *sec'ty.* [L. S.]

*Application of Security for Relief.*

STATE OF GEORGIA, } To the Court of Ordinary of said County.  
*Houston County.* }

The Petition of *Richard Roe*, security for *John Sanders*, Adminis-  
 trator upon the Estate of *John Doe*, deceased, respectfully sheweth,  
 that your Petitioner heretofore, to wit, on the *first day of January*, in  
 the year of our Lord eighteen hundred and *fifty-seven*, became the se-  
 curity upon the Administration Bond of *John Sanders*, who took out  
 Letters of Administration upon the Estate of *John Doe*, deceased;  
 which Administration Bond is for the sum of *five thousand dollars*.  
 And your Petitioner avers that he conceives himself in danger of be-  
 ing injured by his securityship as aforesaid, in consequence of the  
 neglect of said Administrator. Wherefore, your Petitioner prays for  
 relief from said securityship, according to the statute in such case made  
 and provided. This *May 1*, 1859.

SIMON WAKE, *App'ts Att'y.*

NOTE.—The subsequent proceedings may be the same as those against an Executor,  
 which see.

*Notice to Debtors and Creditors.*

STATE OF GEORGIA, } All persons having demands against *John Doe*,  
*Houston County.* } deceased, late of said County, are hereby notified  
 and required to present them, properly attested, to the undersigned,  
 within the time prescribed by law. And all persons indebted to said  
 deceased, are hereby required to make immediate payment to the un-  
 dersigned. This *May 1*, 1859.

RICHARD ROE, *Admin.*

AN ACT to authorize and empower Executors and Administrators to make  
 Titles to Land in certain cases.—*Approved Feb. 15, 1799.*

How, when  
 the party to  
 make Titles  
 dies without  
 having done  
 so, the Court  
 of Ordinary  
 may direct the  
 Executor or

93. SEC. I. Where it shall clearly and indisputably appear, that any person  
 or persons hath, or have, entered into any bond, obligation or other agreement  
 in writing, whereby they were bound to make titles to any lands, tenements  
 or hereditaments, and shall die without having performed the same, or making  
 provision therefor by will, the person or persons to whom such bond, obliga-  
 tion or other agreement in writing as aforesaid, was given, shall petition the  
 Court of Ordinary of the county in which the executors or administrators re-

side, and annex a copy of such bond, obligation or other agreement thereto, Administrator praying the court to direct the executors of such testator, or administrator of such intestate, to make titles for the lands, tenements or hereditaments, expressed in the said bond, obligation or other agreement: [whereupon, the said court shall give at least three months' notice in one of the public gazettes, and in the public places of the county, of such application—*see next Act*;] and that the executors or administrators will be directed, at the court to be held at the next term, to make titles agreeably to such bond, obligation or other agreement. And if no objection shall be made thereto, during the said next term, it shall and may be lawful for the executors of such testator, or the administrators of such intestate, on application made to him or them for that purpose, and upon its being made known to his, her or their satisfaction, that the contract hath been carried fairly into effect on the part of the person or persons to whom such bond, obligation or other agreement in writing was made, or their legal representatives; and the amount of the purchase money, or the consideration for which the said contract was entered into shall be fully paid or performed, [with the concurrence of the court of ordinary of the county in which the intestate died or resided at the time of his or her decease; *repealed*, *see* 191,] to make and execute titles in fee simple, for such lands or tenements; and fully and completely perform the contract and agreement of the deceased, as perfectly and effectually, to all intents and purposes, as the party having made the said contract, might or could have done, when in life. Any law to the contrary notwithstanding: *Provided always nevertheless, and be it further enacted*, That if any of the heirs or legal representatives of the deceased, shall oppose or dissent to the making of such titles by the executor or administrator, such executor or administrator shall withhold and forbear to make such title or titles, until a suit shall be instituted against him or them, and a verdict of a jury, or judgment of the court, shall pass against him for that purpose.

Administrator to execute titles.

Repealed.

Upon dissent of person interested, Executor or Administrator shall not make titles.

94. SEC. II. It shall be the duty of such executor or executors, administrator or administrators, in all cases where titles to lands are made in virtue of this act, to make a fair statement thereof, describing the boundaries and situation of the land, and return the same, together with the bond, obligation or other agreement in writing, which may have been taken up upon making such titles, to the court of ordinary, to be filed in the clerk's office of that court, subject to the inspection of all persons interested.

What Executor or Administrator must do after executing titles.

AN ACT to provide for the perfecting of Titles to Land where parties die, and have Bonds out for Titles.—*Approved Dec. 22, 1857.*

95. SEC. I. *Be it enacted*, That when any person shall hereafter die, whose bond is out for titles to land, and it is made appear, to the satisfaction of all parties, that the provisions of the bond have been complied with, that administrators, or executors, or executrix, may proceed to make and deliver titles to the holder of said bond, without advertising ninety days, in some public news-paper, as is now prescribed by law. All laws and parts of laws militating against this act, be and the same are hereby repealed.

Notice dispensed with in certain cases.

### *Petition and Order.*

STATE OF GEORGIA, ) To the Court of Ordinary of said County. The  
Houston County. )  
Petition of *John Doe* showeth, that heretofore, to wit, on the *first* day of *January*, in the year 1856, *Richard Roe*, of said County, then in life, now deceased, made and executed to your petitioner his *Bond*; (a copy of which is to this Petition annexed, the



original being here in Court to be shown,) binding himself in the sum of *one thousand dollars*, conditioned to be void if the said *Richard Roe*, should make, or cause to be made, to your Petitioner, Titles in *fee-simple*, to *lot of land number forty-nine*, in the *tenth* district of the County aforesaid, containing *two hundred two and a half acres*. And your petitioner avers, that on the *tenth* day of *March*, eighteen hundred and *forty-six*, said *Richard Roe* departed this life, without executing, or causing to be executed, or providing by Will or otherwise, for Titles to be executed to your Petitioner, to said *lot of land*. And your petitioner avers that he paid the *full* amount of the purchase price of said *lot of land*, to said *Richard Roe*, during his lifetime, and that he has performed faithfully, his part of the contract, under which said Bond was given. Wherefore, your Petitioner prays that *Charles Smith, Administrator* upon the Estate of said *Richard Roe*, deceased, may be ordered and directed by this Court, to execute to your Petitioner, Titles in *fee-simple*, for said *lot of land*, in conformity with said *Bond*; according to the statute in such case made and provided. And your Petitioner, &c. This *January 1*, 1859.

SIMON WAKE, *Pl'ff's Att'y*.

NOTE.—Where the vendee dies, see 106.\* Where the vendor dies, see 107.

### *Rule Nisi.*

## GEORGIA—HOUSTON COUNTY.

*Court of Ordinary, January Term, 1859.*

It appearing to the Court by the Petition of *John Doe*, that *Richard Roe*, deceased, late of said County, did in his lifetime, execute to said *John Doe*, his *Bond*, conditioned to execute Titles in *fee-simple*, to said *John Doe*, for *lot of land number forty-nine*, in the *tenth* district of said County. And it further appearing that said *Richard Roe* departed this life without executing Titles to said *lot of land*, or by Will, or otherwise providing therefor. And it further appearing, that said *John Doe* has paid the *full* amount of the purchase price of said *lot of land*. And said *John Doe* having petitioned this Court to direct *Charles Smith, Administrator* upon the Estate of said *Richard Roe*, deceased, to execute to him Titles to said *lot of land*, in conformity with said *Bond*. Therefore all persons concerned, are hereby notified and required, to file their objections (if any they have, in my office, within the time prescribed by law,) why said *Administrator* should not be ordered to execute Titles to said *lot of land*, in conformity with said *Bond*. And it is further ordered, that a copy of this rule be published in the *Georgia Telegraph* news-paper, and at three or more public places in said County, for three months.

*Extract from the Minutes, this January 1, 1859.*

JOHN S. JOBSON, *Ordinary*.

*Rule Absolute.*

## GEORGIA—HOUSTON COUNTY.

*Court of Ordinary, May Term, 1859.*

Whereas, at the *January* Term of this Court, an order was passed, upon the Petition of *John Doe*, praying that *Charles Smith, Administrator* upon the estate of *Richard Roe*, deceased, might be required to execute to him Titles to *lot of land* number *forty-nine* in the *tenth* district of *Houston* County. And whereas, notice of said application has been published according to law, and no objections being filed to said proceedings. Therefore, it is hereby ordered, that said *Charles Smith, Administrator*, as aforesaid, execute Titles to said *John Doe*, for said *lot of land*, in conformity with the *Bond* of said *Richard Roe*, deceased, made and executed in his lifetime.

*Deed under the above Order.*

STATE OF GEORGIA, } Whereas, *Richard Roe*, deceased, late of said  
*Houston* County. } County, did in his lifetime, make and deliver to  
*John Doe*, his *Bond*, conditioned to make Titles to *lot of land* number  
*forty-nine*, in the *tenth* district of the County aforesaid, and died with-  
out performing the condition of said *Bond* aforesaid. And whereas,  
said *John Doe* petitioned the Court of Ordinary of said County, re-  
quiring the *Administrator* of said *Richard Roe*, deceased, to execute  
Titles to him for said *lot of land*. And whereas, said Court of Ordinary  
passed an order directing and requiring said *Administrator* to execute  
Titles to said *lot of land*, in conformity with said *Bond*, and in conform-  
ity with the statute in such case made and provided. Now, this  
Indenture, made this *first* day of *March*, in the year eighteen hundred  
and *fifty-nine*, between *Charles Smith*, of the County and State afore-  
said, *Administrator* upon the Estate of *Richard Roe*, deceased, late of  
said County and State, of the one part, and *John Doe*, of the *same* place,  
of the other part, witnesseth: that for and in consideration of the sum  
of *one thousand dollars*, paid to the said *Richard Roe*, deceased, in his  
lifetime, by the said *John Doe*, said *Charles Smith, Administrator*, as  
aforesaid, doth hereby grant, bargain and convey unto the said *John*  
*Doe*, *lot of land* number *forty-nine*, in the *tenth* district of said county of  
*Houston*, containing *two hundred two and a half* acres, more or less;  
(bounded on the north by *lot of land* number *fifty*; on the west by *lot*  
*of land* number *forty-eight*; on the east by *lot of land* number *eighty*, all  
in the *tenth* district of said County; and on the south by *lot of land*  
number *two hundred and one*, in the *thirteenth* district of said County;) with all the rights, members and appurtenances to said *lot of land*, in  
anywise appertaining or belonging unto him, the said *John Doe*, his  
heirs, Executors and Administrators, and to their own proper use and  
benefit, forever in fee-simple.

In testimony whereof, the said *Charles Smith, Administrator* as afore-



said, hath hereunto set his hand and affixed his seal, the day and year before written.

Signed, sealed and delivered,  
in presence of  
*John Stone,*  
*James Mack, J. P.* }

CHARLES SMITH, *Adm'r* [L. S.]  
of *Richard Roe, dec.*

NOTE.—The Petition of *John Doe* and the Rules passed by the Court of Ordinary are, in this case, Muniments of Title, and should accompany and be recorded, with the Deed. Where both the contracting parties are dead, the Deed must be executed to the heirs of the obligee.

AN ACT for the better protection and security of Orphans and their Estates.—  
*Approved Feb. 18, 1799.*

Ordinary must keep a record of all Executors, Adm'rs, and Guard'ns. 96. SEC. I. From and after the passing of this act, it shall be the duty of the clerks of the courts of ordinary in the respective counties, to enter into a book to be kept for that purpose, the names of all the executors, administrators and guardians, which may have been, or shall in future be, appointed in the several counties, together with the names of their securities. Which book shall at all times be subject to the examination of the inferior court, and of such other person or persons as may be interested therein.

Annual returns to be made by Guardian, Exec'r, and Adm'r 97. SEC. II. All guardians, executors and administrators heretofore appointed, and which shall hereafter be appointed, shall at the next inferior court, after the expiration of nine months, in the respective counties, after the passing of this act, exhibit an account on oath, of all the estate of such orphan or deceased person, which he or they shall have received, to be entered by the clerk of the court of ordinary, in a book to be kept for that purpose only, [see 117.] And when such court shall know or be informed that any such guardian, executors or administrators shall waste, or in any manner mismanage the estate of such orphan or deceased person; or does not take due care of the education and maintenance of such orphan, according to his, her or their circumstances; or where such guardian, executor or administrators, or his, her or their securities are likely to become insolvent, such court may make such order for the better managing and securing such estate, and educating and maintaining such orphan, as they shall think fit.

Annual acc'ts must be made. 98. SEC. III. It shall be the duty of all such guardians, executors and administrators, to render a full and correct account of the state and condition of such estates as they may severally have in their possession, to the first term [see 117 and 188.] of the inferior court in their respective counties, in which they shall severally be appointed, in every year. Which account shall contain a statement of the transactions of the estate, to the last day of December preceding such court. And the said courts shall yearly at the court aforesaid, examine the accounts of such guardians, executors and administrators, so to be exhibited, and shall direct process to issue returnable to the next court, against all guardians, executors and administrators, then failing to appear and render such account; whether he, she or they be resident in the same or any other county. And shall also inquire into the abuses or mismanagements of

Process must issue against defaulters. all guardians, executors and administrators; and whether they or their securities are likely to become insolvent or not, and thereupon to proceed according to the powers herein-before given by this act. *Provided*, that nothing herein contained shall be construed to restrain the said inferior courts from inquiring, as often as they shall think proper, into the abuses and mismanagement of guardians, executors and administrators, but they may exercise such powers at any time when it shall appear necessary.

Court may corre't abuses. 99. SEC. IV. All guardians shall be allowed in their accounts, to charge all reasonable disbursements and expenses, suitable to the circumstances of the orphan committed to his care. And where it shall appear to the said court

Ordinary may inquire into Estates as often as he thinks proper.

that the annual profits of the estate of any orphan is not sufficient for the education and maintenance of such orphan, it shall be the duty of such court forthwith to bind out the said orphan, for the whole or such part of the time of such orphan's minority, as to them shall seem best. And the person to whom such orphan shall be bound, shall undertake to clothe and maintain such apprentice, in such manner as the said court may direct; and shall cause such apprentice to be taught to read and write the English language, and the usual rules of arithmetic. And in all cases where it shall appear to the court that any person to whom any orphan shall be bound, in manner aforesaid, shall misuse or ill-treat such orphan; or shall fail to comply with the condition on which such orphan was bound, it shall be the duty of said court, on due notice and proof thereof, to take said orphan out of the possession of such person, and bind him or her to some other person.

Ordinary may  
bind out Or-  
phan.

What he must  
be taught.

Power of the  
Court on fail-  
ure of Master  
of  
Apprentice.

100. SEC. V. When any guardian, executor or administrator, chargeable with the estate of any orphan or deceased person, to him, her or them committed, shall die so chargeable, his, her or their executors or administrators shall be compellable to pay out of his, her or their estate, so much as shall appear to be due to the estate of such orphan or deceased person, before any other debt of such testator or intestate.

Executor, etc.,  
dying charge-  
able, what  
may be done.

### First Order.

It appearing to the Court that the annual profits of the Estate of *John Doe*, an Orphan, is insufficient for the education and maintenance of said *John Doe*; it is, therefore, ordered that said *John Doe* be bound to *Richard Roe*, of *Bibb County, Carpenter*, for and during the term of *three years*. Said *Richard Roe* complying with the requirements of the statute in such case made and provided.

### Master's Obligation.

STATE OF GEORGIA, } Whereas, *John S. Jobson*, Esq., Ordinary of  
Houston County. } said County, did, at the *January Term, 1857*, of  
the Court of Ordinary, pass an order that *John Doe*, an orphan, should  
be bound to the undersigned, for the term of *three years*; in order that  
he might be taught the trade of a *Carpenter*. Now, therefore, the un-  
dersigned undertakes and promises, (in the sum of *one thousand dol-*  
*lars*,) on his part, to clothe and maintain said *John Doe*, in a decent  
and respectable manner; and to cause said *John Doe* to be taught to  
read and write the English language, and the usual rules of arithmetic.  
And undertakes further to teach, or cause said *John Doe* to be taught,  
the trade of a *Carpenter*. And the undersigned promises and under-  
takes, that he will not misuse or ill-treat said Apprentice himself, nor  
will he suffer or permit it to be done by others, with his knowledge  
or consent.

Witness my hand and seal, this *January 1, 1859*.

Approved—

RICHARD ROE. [L. S.]

*John S. Jobson*, Ordinary.

### Apprentice's Indenture.

STATE OF GEORGIA, } This Indenture witnesseth, that *John Doe*, by  
Houston County. } and with the consent of *John S. Jobson*, Ordinary  
of said County, hath put himself, and by these presents doth volun-



tarily and of his own free will and accord, put himself Apprentice to *Richard Roe, Carpenter*, of the County of *Bibb*, to learn the art and trade, and after the manner of a *Carpenter*. To serve the said *Richard Roe*, from the date hereof, for and during and until the full end and term of *three years*, from the *first day of this month*. During all which term, the said Apprentice his said Master faithfully shall serve; his secrets keep; his lawful commands everywhere readily obey. He shall do no damage to his said Master, nor see it done by others, without giving notice thereof to his said Master. Shall not waste his Master's goods, nor lend unlawfully to any. He shall not commit fornication, nor contract matrimony, within the said term. At cards, dice, or any other unlawful game, he shall not play, whereby his said Master may have damage, with his own goods, nor with the goods of others; without license from his said Master, shall not buy or sell. He shall not absent himself day nor night from his said Master's service, without his leave; nor haunt ale-houses or play-houses, but in all things behave himself as a faithful Apprentice ought to do, during the said term. And the said *Richard Roe* shall cause the said Apprentice to be instructed in reading and writing the English language, and in the principal rules of arithmetic; shall not misuse or ill-treat said Apprentice himself, nor permit it to be done by others; shall use the utmost of his endeavors to teach, or cause to be taught, or instructed, the said Apprentice, in the art, or trade, of a *Carpenter*; and procure and provide for him, sufficient meat, drink, clothing, lodging and washing, and attendance in sickness, fitting for an Apprentice, during the said term of *three years*. And for the true performance of all and singular, the covenants aforesaid, the parties bind themselves each unto the other, firmly by these presents.

In witness whereof, the said parties have, interchangeably, set their hands and seals hereunto, this *second day of January, 1857*.

Signed, sealed and delivered, }  
in presence of  
*James Mack, J. P.*

JOHN DOE. [L. S.]

RICHARD ROE. [L. S.]

JOHN S. JOBSON, *Or'y.* [L. S.]

NOTE.—This instrument must be signed in duplicate, the Ordinary to possess one, and the Master the other.

### *Second Order.*

Whereas, it has been made to appear to me, *John S. Jobson*, Ordinary of said County, by the evidence of *Charles Smith*, taken in open Court, that *Richard Roe*, to whom *John Doe*, an orphan of said County, was bound as an Apprentice; that said *Richard Roe*, does himself, and permits others, to misuse and ill-treat said Apprentice, contrary to his obligation and undertaking; and the said *Richard Roe* having been notified, and failing to give satisfaction, it is hereby ordered, that the Indenture of Apprenticeship, executed to the said *Richard Roe*, on the *second day of January, 1857*, be and the same is hereby cancelled and revoked.

AN ACT to regulate sales made by Executors and Administrators.—*Approved Dec. 12, 1804.*

101. Immediately from and after the passing of this act, no sale made by executors or administrators, shall commence before the hour of ten o'clock in the forenoon, or be continued after the hour of four o'clock in the afternoon; nor shall any such sale be continued from day to day, unless the advertisement shall be so expressed, and the same be publicly made known by the hour of four o'clock in the afternoon of the day on which the said sale shall commence.

Regulating  
sales by Ex'rs  
and Adm'rs.

AN ACT to alter and amend an act, entitled an act to carry into effect the sixth section of the third article of the Constitution, and to amend an act, entitled an act to carry into effect, &c. [Act of Feb. 16, 1799.]—*Approved Dec. 6, 1805.*

102. SEC. II. No administrator shall be allowed to sell any slave or slaves belonging to the estate of his intestate, but where the other personal estate, together with the hire of such slave or slaves for twelve months, shall be insufficient to discharge the debts due by the estate; or where one or more slaves shall be subject to distribution, and an equal division thereof cannot be made in kind, it shall be lawful for the court of ordinary, by which administration was granted, to direct the sale of such slave or slaves: *Provided always*, that each distributee, or his, her or their guardian, shall receive twenty days' notice in writing, previous to the granting of such order, to show cause, if any he or they can, against such sale.

Slaves not to  
be sold but  
under peculiar  
circum-  
stances, and  
after notice  
given.

103. SEC. III. From and after the passing of this act, it shall be the duty of all administrators, of sales to be made by them, to put up the property to be sold, in such manner and quantity as shall be deemed most advantageous to said estate.

Property to be  
put up to the  
best advan-  
tage.

104. SEC. V. Whenever securities for executors, administrators or guardians, conceive themselves in danger of suffering thereby, and petition the court of ordinary for relief, the said court shall cause the executor, administrator or guardian, to be summoned to appear before them at the next sitting thereof, and shall make such order, and give such relief in the case, by counter security or otherwise, as to the said court shall seem just and equitable.

Relief of  
securities of  
Executor,  
Adm'r and  
Guardian.

105. SEC. VI. When it shall be made to appear to the satisfaction of the court of ordinary, that any executor or executors of an estate are in insolvent circumstances, and that the estate is likely to be wasted by the improper conduct of such executor or executors, it shall be the duty of said court, by order, to compel such executor or executors to give bond, with approved security, for the faithful execution of the trust reposed in him, her or them, by the said will. And in case of failure to comply with such order, to grant letters of administration with the will annexed, to such person as would be entitled thereto, if no such executor had been appointed.

Insolvent  
Executor may  
be required to  
give security.

106. SEC. VII. Where there has been a contract or contracts in writing for the sale of land, and the party to whom titles are to be made dies before such titles are executed, it shall and may be lawful for the court of ordinary, to order the title or titles to be made to the heirs general, of the party deceased.

Where vendee  
of land dies,  
how Titles are  
to be made.

107. SEC. VIII. Where any person or persons shall depart this life after having entered into any written agreement for the conveyance of any real estate, and the obligee shall also have departed this life, the executors of the obligor shall in like manner, make and execute a conveyance or conveyances, to the heirs of the obligee.

Where both  
parties die,  
how Titles are  
to be made.

108. SEC. IX. It shall be the duty of all ministers of the gospel, judges, justices of the inferior courts, or justices of the peace, who shall hereafter join together any person in the bonds of matrimony, to make a return on the marriage license, of the actual intermarriage of the parties, and the day on which

Person marry-  
ing parties, to  
make return  
on License.



Copy of registered License made evidence.

the same was solemnized, to the clerk of the court of ordinary, whose duty it shall be to enter the same in a book to be kept by him for that purpose, for which he shall be entitled to ask and receive the sum of twenty-five cents, which shall be paid when such license shall be granted. Which register, or a certified copy thereof, shall be admitted as evidence of such marriage, in any court where the solemnization of such marriage shall be called in question.

SEC. X. This act shall not affect or operate on any administration heretofore granted.

### *Public Notice.*

STATE OF GEORGIA, } To the *Distributees* of *John Doe*, deceased, late of  
Houston County. } said County.

You are hereby notified, that according to law, I will apply to the Court of Ordinary of said County, for leave to sell the *Slaves* belonging to the Estate of said deceased; for the benefit of the parties concerned. This *January 1*, 1859.

RICHARD ROE, *Administrator*.

NOTE.—A copy of the above Notice, must be served, personally, on the Distributee; or he may acknowledge service and waive copy, on the original; or Notice must be published, in some Gazette, weekly, for two months.

### *Order by the Court.*

Whereas, *Richard Roe*, Administrator of *John Doe*, deceased, has given the notice required by law, of his intention to apply for leave to sell the *Slaves* belonging to the Estate of said deceased, for the benefit of the *heirs* and *creditors* of said deceased. And whereas, no objection has been filed to said proceeding, and it appearing proper and necessary: therefore, it is hereby ordered that said *Richard Roe* have leave to sell said *Slaves*, after giving the notices required by law.

### *Administrator's Sale.*

STATE OF GEORGIA, } By virtue of an Order of the Court of Ordinary  
Houston County. } of said County, will be sold on the *first Tuesday* in *March* next, between the lawful hours of sale, at the Court-House door of said County, the following slaves, to wit: *Tom*, a man about *thirty* years of age. *Polly*, a woman about *twenty* years of age. *Peter*, a boy about *six* years of age. And *Nancy*, a girl about *four* years of age; property belonging to the Estate of *John Doe*, deceased, late of said County. Sold for the benefit of the *heirs* and *creditors* of said deceased. Terms *cash*. This *January 1*, 1859.

RICHARD ROE, *Administrator*.

NOTE.—The above Notice must be published forty days.

### *Requiring Executor to give Security.*

#### PETITION.

STATE OF GEORGIA, }  
Houston County. } To the Court of Ordinary of said County.

The Petition of *Nancy Doe*, one of the Legatees of the Will of *John Doe*, deceased, late of said County, respectfully sheweth, that *Richard*

*Roe*, Executor of the Will of said deceased, is in insolvent circumstances, and that the Estate of said deceased is likely to be wasted by the improper conduct of said Executor, in this, to wit: [*here set out the conduct of the Executor which will go to show that he is likely to mismanage the Estate.*] Wherefore, your Petitioner prays that said *Richard Roe*, Executor as aforesaid, may be required to give Bond and security, in terms of the statute in such case made and provided. And your Petitioner will ever pray, &c. This *May 1*, 1859.

SIMON WAKE, *Petitioner's Att'y.*

### *Rule Nisi.*

It appearing to the Court by the Petition of *Nancy Doe*, one of the Legatees of *John Doe*, deceased, that *Richard Roe*, the Executor of the Will of said deceased, is in insolvent circumstances, and that said Estate is likely to be wasted by the improper conduct of said Executor, [*here set out the causes of apprehension, as they are presented in the Petition.*] Therefore, it is ordered, that said Executor appear at the next Term of this Court, to be held on the first Monday in *June* next, and show cause, (if any he has,) why he should not be required to give security for the further execution of said Will. And it is further ordered, that a copy of this Rule be served on said Executor, *ten* days before the next term of this Court.

NOTE.—It must appear that a copy of the above Rule has been served upon the Executor.

### *Rule Absolute.*

Whereas, by a rule *Nisi.*, passed at the last Term of this Court, *Richard Roe*, Executor of the Will of *John Doe*, deceased, was required, for certain causes in said Order set forth, to show cause, (if any he had,) why he should not be required to give security for the further execution of the Will of said deceased. And whereas, the causes shown by said Executor, are deemed insufficient and unsatisfactory. And whereas, it appears reasonable and proper that said Executor should give security: it is, therefore, ordered that said Executor give Bond and good security, in the sum of *ten thousand dollars*, for the further and faithful execution of said Will, and that upon failure thereof, he be dismissed, and his Letters Testamentary revoked.

### *Bond and security of Executor.*

STATE OF GEORGIA, } We, *Richard Roe* as principal, and *John Sanders*  
*Houston County.* } as security, are held and bound unto *John S. Jobson*, Ordinary of said County, and his successors in office, in the sum of *ten thousand dollars*, subject to the following conditions—

Whereas, said *Richard Roe* was by the Will of *John Doe*, deceased, appointed Executor of said Will. And whereas, the Ordinary of said County, has directed and required said Executor to give Bond and security, in conformity with the statute in such case made and provi-



ded. Now, should said *Richard Roe*, well and faithfully execute the trust reposed in him by the said Will. And well and faithfully, do and perform, all and singular, the duties devolving on him as Executor, according to law, then the above obligation to be void ; otherwise, of force. This *May 1*, 1859.

Approved—  
*James Mack, J. P.*

RICHARD ROE, *prin'l.* [L. S.]  
JOHN SANDERS, *sec'ty.* [L. S.]

### *Marriage License.*

STATE OF GEORGIA, ) To any ordained Minister of the Gospel, Judge,  
*Houston County.* } Justice of the Inferior Court, or Justice of the  
Peace.

You are hereby authorized and empowered, to join *John Doe* and *Eliza Swan*, in the holy state of Matrimony, according to the Constitution and laws of this State. And for so doing this shall be your sufficient License.

*Given under my hand and seal of office, this May 1*, 1859.

JOHN S. JOBSON, *Ordinary.* [L. S.]

### *Return on the License.*

I hereby certify that *John Doe* and *Eliza Swan*, were by me, this day, joined in Matrimony, according to this License. This *May 1*, 1859.

JAMES THOMAS, *Minister of the Gospel.*

### *Marriage Ceremony.*

At the time and place appointed, the parties to be Married must present themselves before the Minister or Magistrate, standing together, the man on the right of the woman.

The Minister or Magistrate will then say—

Dearly beloved, we are gathered together here, in the sight of God, and in the presence of these witnesses, for the purpose of joining together in holy Matrimony, this man and this woman. Marriage is an honorable estate, instituted of God in the time of man's innocency, signifying unto us the mystical union that exists betwixt Christ and His Church. Which holy estate Christ adorned and beautified with his presence and first miracle, which he wrought in Cana of Galilee ; and is commended of St. Paul, to be honorable among all men ; and therefore, is not by any to be entered into, or taken in hand unadvisedly, but reverently, discreetly, advisedly, and in the fear of God. Into which holy estate, these two persons present, come now to be joined : therefore, if any person can show any just cause why they may not lawfully be joined together, let him now speak, or else hereafter, forever hold his peace.

*The Minister, or Magistrate, shall then say to the man*—JOHN, wilt thou have this woman to be thy wedded wife. To live together after God's ordinance, in the holy state of Matrimony ? Wilt thou love her, comfort her, honor and keep her, in sickness and in health ; and forsaking all others, keep thee only unto her, as long as ye both shall live ?

*The man shall answer*—I will.

*The Minister, or Magistrate, shall then say to the woman*—ELIZA, wilt thou have this man to be thy wedded husband. To live together after God's ordinance, in the holy state of Matrimony ? Will thou obey him, serve him, love him, honor and keep him, in sickness and in health ; and forsaking all others, keep thee only unto him, so long as ye both shall live ?

*The woman shall answer*—I will.

*Then shall the Minister, or Magistrate, put the right hand of the woman into the left hand of the man, and say*—"Whom God hath joined together, let no man put asunder." Forasmuch as *John* and *Eliza* have covenanted together in holy wedlock, and have witnessed the same before God and this company, and thereto have pledged their faith, either to other ; and have declared the same by joining hands, I pronounce them husband and wife, in the name of the Father, and of the Son, and of the Holy Ghost—*Amen.*

*Then shall the Minister, or Magistrate, say*—God the Father, God the Son, God the Holy Ghost, bless, preserve and keep you. The Lord mercifully with His favor, look upon you, and so fill you with all spiritual benediction and grace, that ye may so live together in this life, that in the world to come, ye may have eternal life.—*Amen.*

*Then shall the Minister, or Magistrate, say*—The grace of our Lord Jesus Christ, the love of God the Father, the fellowship and communion of the Holy Ghost, abide with us all world without end.—*Amen.*

AN ACT to authorize Clerks of the Courts of Ordinary in the several Counties of this State, to grant Marriage Licenses directed to Jewish Ministers, or other persons authorized to perform the Marriage Ceremony between Jews. And to authorise Jews to be married according to their own forms.—*Approved Dec. 5, 1849.*

109. SEC. I. *Be it enacted*, That the clerks of the courts of ordinary shall, upon application being made, grant and direct marriage licenses to any Jewish minister, or other person authorized to perform the marriage ceremony between Jews; and that such person so performing the marriage ceremony, shall make a return on the license, in manner and form as is now required by law.

Marriage Licenses may be directed to Jewish ministers.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT for the more effectually securing the Probate of Wills; limiting the time for Executors to qualify, and Widows to make their Election.—*Approved Dec. 10, 1807.*

*Whereas*, there is no law in this State which sufficiently enforces Witnesses to Wills to prove the same, whereby the wise and benevolent intentions of Testators are often defeated, and Heirs and Legatees deprived of their just rights; for remedy whereof—

109\*. SEC. I. *Be it enacted*, That it shall be the duty of all and every witness to any will or wills, to be and appear at the court of ordinary, on the regular day for the probate of the said will, ready to testify of and concerning the validity of the same. And the courts of ordinary in this State shall have, and they are hereby vested with the same powers and authority that are vested in the superior and inferior courts, for the production and punishment of any witness or witnesses, that may be needful to carry into effect the business of the said courts of ordinary.

Witness to Will must attend the Probate of the same. Powers of the Court of Ordinary in this respect.

*And whereas* it often happens that persons left as Executors to Wills refuse to qualify, to the delay of the just claims of creditors, and to the injury of the Estate of such Testator; for remedy whereof—

110. SEC. II. *Be it enacted*, That it shall be the duty of all and every such person so left as executor, to be and appear at the court of ordinary, at the first regular court for the probate of the same. And in case any such person left as executor, should not qualify within one year after the death of their testator, then and in that case their rights to qualify shall be considered to be abated and destroyed. And the said courts are hereby prohibited from admitting them to the same.—[*See 115.*]

Person left Executor must qualify within one year.

111. SEC. IV. It shall be the duty of all widows, within one year after the death of their husbands, to make their election or portion out of the estate of the deceased. And any such widow so failing to make her election, shall be considered as having taken her dower or thirds, and shall forever after be debarred from taking any other part or portion of the said estate.—[*See Dower.*]

Time for widows to make their Election.



*Widow's Election.*

STATE OF GEORGIA, } To *John Doe*, Administrator upon the Estate of  
*Houston County.* } *Richard Roe*, deceased.

You are hereby notified that in making my Election, in the Estate of said deceased, I shall claim *a child's part* of the Real Estate. This *May 1, 1859.*

SARAH ROE, *widow of*  
*Richard Roe, deceased.*

AN ACT to amend an act, entitled an act to protect the Estates of Orphans, and to make permanent provision for the Poor, passed Dec. 18, 1792.—*Approved Dec. 14, 1809.*

Real estate advertised by Executor or Administrator, how claimed and tried. 112. SEC. I. Where any executor or executors, administrator or administrators, have or may advertise that it is his, her or their intention to apply for leave to sell any real estate, as the property of his, her or their testator or intestate; or having obtained an order of sale; and the said estate shall be claimed by any other person or persons; such claimant by himself, his agent or attorney, shall file with the clerk of the inferior court or court of ordinary, as the case may be, such claim on oath; a copy whereof shall be served upon such executor or administrator previous to the day of sale. Whereupon it shall be the duty of said clerk to transmit such claim to the next superior court of the county where the land lies, and the right of property shall be there tried, upon an issue made up; in the same manner and under the like regulations, restrictions and penalties, as are laid down in the Judiciary, for the trial of the right of property, levied on under executions.

Personal property, how claimed and tried. 113. SEC. II. Where personal property shall be advertised for sale by any executor or executors, administrator or administrators, and the same shall be claimed in manner aforesaid, such claim shall be tried in the superior or inferior court next to be held after such claim filed, in the county where such executors or administrators may reside: *Provided*, such property is in their possession, and if in possession of the claimant, such trial shall be had in the county where the claimant resides, under the same regulations, restrictions and penalties as aforesaid.

Claim how tried.

*Claim under the above Statute.*

STATE OF GEORGIA, } Personally appeared before the undersigned,  
*Houston County.* } *John Doe*, who being sworn saith, that a certain tract of land, to wit, *lot number forty-nine, in the tenth district of said County*, (for which an order of sale has been obtained from the Court of Ordinary of said County, by *Richard Roe*, Administrator upon the Estate of *Charles Smith*, deceased,) is not the property of the deceased, but is the property of deponent.

Sworn to before me,  
 this *May 1, 1859.*  
*James Mack, J. P.*

JOHN DOE.

AN ACT [*to amend an act*] for the more effectually securing the Probate of Wills; limiting the times for Executors to qualify, and Widows to make their Election; and for other purposes therein mentioned.—*Approved Dec. 15, 1810.*

114. SEC. I. The inferior court when sitting for ordinary purposes, shall be known only as the inferior court sitting for that purpose, and that their clerk

shall be known as the clerk of ordinary only. And that the said inferior court when sitting for ordinary purposes, shall have the original jurisdiction of all testate and intestate estates; appointing administrators and guardians; to qualify executors, administrators and guardians, and to bind out orphans, and all such other matters and things as appertain or relate to estates of deceased persons, whether testate or intestate.

Original  
jurisdiction of  
Court of  
Ordinary.

*Whereas*, it frequently happens that a person appoints, in his last Will and Testament, two or more Executors, one of whom only qualifies under the said Will; and if such qualified Executor dies, the other Executors nominated in the Will of the Testator cannot qualify; by which means the Estates of the Testator are placed in the hands of an Administrator *de bonis non*, with the Will annexed; and the person in whom the Testator confided, prevented from acting; for remedy whereof—

115. SEC. II. *Be it enacted*, That from and after the passing of this act, it shall and may be lawful for any executor named in the will of the testator, to qualify under the said will at any time: *Provided*, the qualification of one or more takes place within twelve months after the decease of the testator: *Provided also*, that the executor and executors who do not qualify within twelve months from and after the decease of the testator, one of whom shall do so within twelve months after the decease of the only qualified executor.

Executor,  
under certain  
circumstances  
may qualify,  
&c.

116. SEC. III. It shall be lawful for any executor or executors, administrator or administrators, who may have fully discharged the duties assigned to him or them, to petition the ordinary court for a discharge from his or their executorship or administration. Upon which petition the said court shall order a citation to be issued, requiring all persons concerned to show cause, (if any they have,) why the said executor or executors, administrator or administrators, on the day therein to be named, should not be discharged. Which citation shall be published in one or more gazettes of this State, for the space of six months; and if no cause is shown to the contrary; and it shall also appear from an examination into the situation of the testator's affairs and estates, that the said petitioning executor or executors, administrator or administrators, have faithfully and honestly discharged the trust and confidence reposed in him or them, that he or they shall be forthwith dismissed and released from his or their liability, as executor or executors, administrator or administrators.—[See 136, 137 and 185.]

Letters of dis-  
mission may  
be granted.

117. SEC. IV. It shall be the duty of all guardians, executors and administrators, to render a full and correct account of the estate and condition of all such estates as they may severally have in their possession, to the inferior court while sitting for ordinary purposes, in the county for which they may have been appointed, once in each and every year. Which account shall contain a statement on oath, of the transactions of the estate, to the last day of December preceding such return; together with the necessary vouchers relating thereto. And it shall be the duty of said court after examining the same, to approbate or reject such accounts. And it shall be the duty of such court to order the clerk of such court to record all such settlements in a bound book, to be provided by the inferior court for that purpose. And the said clerk shall receive for his fees for such recording, the sum of fifty cents for each settlement so recorded.

Annual re-  
turns must be  
made.

118. SEC. V. The third section of an act entitled "an act for the more effectually securing the probate of wills," &c., passed the 10th day of Dec., 1807, be and the same is hereby repealed.

To be record-  
ed.  
Clerk's fees.

120. SEC. VIII. The said court shall have power and authority upon complaint made and cause shown by any security of any administrator or guardian, that his principal is mismanaging his estate upon which he is

Court may  
relieve securi-  
ties for



administrators the administrator or guardian, to pass an order requiring such administrator and guardians or guardian to show cause, if any they have, at the next term, why such security should not be discharged from his securityship, and such administrator or guardian compelled to give new security, or their administration or guardianship revoked, as to the said court shall seem expedient. And upon the revocation of such administration, or upon the revocation of any letters testamentary, as provided by law, and granting administration *de bonis non*, suits brought by or against the former administrator, shall not, for this cause, be abated, but the removal of such administrator or executor being suggested on record, a *sci. fa.* may issue to make such administrator *de bonis non*, a party, at any time after the granting of such letters *de bonis non*.

### *Application of an Executor for Letters Dismissory.*

STATE OF GEORGIA, } To the Court of Ordinary of said County.  
 Houston County. } The Petition of *John Doe*, *Executor* of the last Will and Testament of *Richard Roe*, deceased, sheweth, that your Petitioner has fully discharged the duties assigned him as *Executor*, as aforesaid. That the Estate of the deceased has been fully administered, according to the Will. That nothing more remains to be done. Wherefore, your Petitioner prays, that Letters Dismissory may be granted him, in conformity to law. And your Petitioner will ever pray, &c. This *May 1*, 1859.

SIMON WAKE, *Pet'r's Att'y.*

### *Citation by the Ordinary.*

STATE OF GEORGIA, } Whereas, *John Doe*, *Executor* of the Will of  
 Houston County. } *Richard Roe*, deceased, applies to the undersigned for Letters Dismissory, from his *Executorship*: therefore, all persons concerned are hereby required to show cause, (if any they have,) why said *Executor*, on first Monday in *July* next, should not be discharged.

*Given under my hand and seal of office, this January 1*, 1859.

JOHN S. JOBSON, *Ordinary*. [L. S.]

NOTE.—The above Citation must be published for six months.

### *Court of Ordinary, July Term, 1859.*

Whereas, at the *January* Term of this Court, *John Doe*, *Executor* of the Will of *Richard Roe*, deceased, applied for Letters Dismissory from said *Executorship* And whereas, Citation has been published, in conformity to law, and no objection has been filed against said application. And whereas, it appears from an examination into the situation of the Testator's affairs and Estates, that the said *Executor* has faithfully and honestly discharged the trust and confidence reposed in him: therefore, ordered, that he be and he is hereby dismissed and discharged from his said trust, and that Letters Dismissory be, and the same are hereby directed to issue to said applicant.

NOTE.—Where the application is continued, and granted at a subsequent Term to that to which the Citation is returnable, the continuance must be noticed in the order granting Dismission.

*Letters Dismissory.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
 Houston County. } To all whom it may concern—*Greeting.*

Whereas, *John Doe*, *Executor* of the last Will and Testament of *Richard Roe*, deceased, late of said County, having well and truly executed the Will of said deceased, according to law, which appears by the Returns and Vouchers filed in my office. And from an examination into the affairs of said *Testator*, it appears that said *Executor*, in the discharge of his duties, has acted faithfully and honestly. And Citation having been published, according to law, requiring all persons having objections to the Dismission of said *Executor*, to file them in my office, in terms of the law, and no objection having been filed; the undersigned doth therefore, in pursuance of the power vested in him by law, hereby discharge, exonerate and dismiss said *Richard Roe*, *Executor* as aforesaid, and his securities, from all and any future liability, in relation to his said *Executorship* whatever.

*Given under my hand and seal of office, this August 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]

*Letters of Administration de bonis non.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
 Houston County. } To *Charles Smith*—*Greeting.*

Whereas, heretofore, to wit, on the first day of *January*, eighteen hundred and *fifty eight*, *John Doe* was appointed *Administrator* on the Estate of *Richard Roe*, deceased; to whom Letters of *Administration* issued, in due form of law. And whereas, on the *first Monday in July*, eighteen hundred and *fifty-eight*, said Letters of *Administration* were revoked, for causes appearing upon the records of my office. And whereas, there remains much of the business connected with the *Administration* of the Estate of said deceased, yet to be performed. And said Ordinary, desirous that the goods, chattels, rights and credits of said deceased, (not yet administered,) may be well and truly administered and disposed of, doth hereby, grant unto *Charles Smith*, of the County aforesaid, full power, by the tenure of these presents, to administer the goods, chattels, rights and credits, of said deceased, not heretofore administered. And to ask, demand, receive, sue for and recover the same. And to pay the debts in which the deceased stood bound, so far forth as his assets will extend, according to law. And then the balance justly to pay over to the legal heirs and distributees of said deceased. And the said *Charles Smith*, having given Bond and security, and taken the oath, and performed all other requisites required by law, necessary to his qualification as *Administrator de bonis non*, he is hereby ordained, constituted and appointed *Administrator de bonis non*, of the Estate of said deceased.

*Given under my hand and seal, this August 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]



*Bond of Administrator de bonis non.*

STATE OF GEORGIA, } We, *Charles Smith* as principal, and *John*  
*Houston County.* } *Sanders* as security, acknowledge ourselves held  
 and bound to *John S. Jobson*, Ordinary of said County, and his succes-  
 sors in office, in the sum of *one thousand dollars*; subject to the follow-  
 ing conditions—

Whereas, said *Charles Smith*, has been appointed Administrator *de bonis non*, on the Estate of *Richard Roe*, deceased. Now, should the said *Charles Smith*, well and truly administer, all and singular, the good and chattels of the said deceased, which may come into his hands, according to law; and make a just and true account of his actings and doings thereon, when thereunto required by the Superior Court, or the ordinary aforesaid. And all the rest of the goods, chattels and credits which shall be found remaining upon the account of the said administration, (the same being first allowed by the Court of Ordinary,) shall deliver and pay to such persons respectively, as are entitled to the same by law. And if it shall hereafter appear that any last Will and Testament was made by the said deceased, and the same be proved before the Court, and the Executor thereto obtain a certificate of the Probate thereof, and the said *Charles Smith* do in such case, if required, render and deliver up the said Letters of Administration *de bonis non*, then this obligation to be void; otherwise, of force. This May 1, 1859.

Approved—  
 JAMES MACK, J. P.

CHARLES SMITH, *prin'l.* [L. S.]  
 JOHN SANDERS, *sec'ty.* [L. S.]

NOTE.—It will be observed that the above Forms contemplate the removal of an *Administrator*. If an *Executor* be removed, and an *Administrator de bonis non* with the Will annexed, be appointed, the facts must so appear in the Letters granted to, and the Bond given by, him. These alterations are easily made by inserting after the words, in the Letters “*Administrator de bonis non*,” the words “with the will annexed,” and so in the Bond.

When an *Executor* is removed, instead of saying that Letters of Administration having been granted him, say “Letters Testamentary,” &c. These suggestions it is supposed, will render the whole matter clear to the mind of the draftsman.

AN ACT to alter and amend an act, entitled “an act to alter and amend the twelfth section of an act to protect the Estates of Orphans, and to make permanent provision for the Poor, passed Dec. 16, 1811.”—*Approved Dec. 18, 1816.*

Whereas, difficulties have arisen from the above-recited act; for remedy—  
 125 SEC. I. *Be it enacted, &c.*, That it shall and may be lawful for the inferior courts in the several counties of this State, when sitting for ordinary purposes, to order a sale, which shall be at public auction, and on the first Tuesday in the month, at the place of public sales in the said county, first giving sixty days’ notice [*see 11,*] thereof in one of the gazettes, and at the door of the court-house in the county where such application shall be made, of such part or the whole of the real estate of every testator or intestate, on application of the executor or executors or executrix, administrator or administrators or administratrix, guardian or guardians, where it is made fully and plainly appear, that the same will be for the benefit of the heirs and creditors of such estate: *Provided*, that a notice of such application for sale, be first made known in one of the gazettes in this State, at least nine months [*see 11*] before any order absolute shall be made thereupon.

Executors  
&c. may sell  
real estate  
after proper  
application  
and notice.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Administrator's Notice.*

STATE OF GEORGIA, } Two months after the date hereof, application  
Houston County. } will be made to the Court of Ordinary of said  
County, for leave to sell *lot of land number forty-nine, in the tenth district of said County*, the entire real estate of *John Doe*, deceased. For the benefit of the heirs and creditors of said deceased. This *January 1, 1859.*  
RICHARD ROE, *Admin'r.*

NOTE.—The above notice must be published weekly for two months, see 11.

### *Order to sell Land.*

It appearing to the Court upon the application of *John Doe*, Administrator of *Richard Roe*, deceased, that it will be for the benefit and advantage of the heirs and creditors of said deceased, that *lot of land number forty-nine, in the tenth district of said County*, the entire real estate of said deceased, should be sold. And it further appearing that notice of application for leave to sell, has been given according to law: it is ordered that said Administrator is hereby authorized to sell said *lot of land*, after giving the notice of sale required by the statute, in such case made and provided.

### *Administrator's Sale.*

STATE OF GEORGIA, } On the first Tuesday in *July* next, will be sold  
Houston County. } at the court-house door in *Perry*, in said County, within the lawful hours of sale, *lot of land number forty-nine, in the tenth district of said County*. Sold as the property of *John Doe*, deceased; for the benefit of the heirs and creditors of said deceased. Terms *cash*. This *May 10, 1859.*

RICHARD ROE, *Admin'r.*

NOTE.—The above notice must be published weekly for forty days—see 11.

NOTE.—The Deed executed to the purchaser, under the above sale, must recite the foregoing proceedings in such manner that they will be perfectly understood and shown by reading the Deed. The formal parts of the Deed will be as in other cases of sales by Administrators.

AN ACT supplementary to and amendatory of the several laws passed in this State for the protection of the Estates of Orphans, Idiots, Lunatics and persons Insane. To provide for filling vacancies in the office of the Clerk of the Court of Ordinary, and to regulate their fees in certain cases.—*Approved Dec. 22, 1820.*

126. All guardians which may be appointed in this State, after the passage of this act, shall before they enter upon the duties of their appointment, take before the Court by whom they are appointed, the following oath or affirmation, to wit: "I, A. B., do solemnly swear, or affirm, (as the case may be,) that I will do and perform the duties required of me as guardian for C. D., orphan of E. F., deceased; or G. H., idiot, lunatic, or person insane, (as the case may be,) according to the laws of this State; to the best of my abilities and understanding—so help me God." And shall, in addition thereto, give

Guardians must qualify.

Oath.



Bond must be given and recorded. bond and sufficient security, in a sum double the amount of their wards' estate; in conformity with the laws now in force in this State. And the bond so taken shall be attested by the clerk of the court of ordinary or his deputy, whose duty it shall be to have the bond so taken, recorded in the clerk's office of the superior court, in the county in which it may be taken, and filed in the clerk's office of the court of ordinary. And it shall be lawful for the clerk of the court of ordinary to ask and receive from such guardian, the same fees that the clerk of the superior court is entitled to for recording deeds, &c., for having such bond recorded.

Returns may be made in vacation. 127. SEC. III. All executors, administrators and guardians, shall from and after the passing of this act, exhibit their accounts and vouchers to the clerk of the court of ordinary, at any time when the said court is not in session. And it shall be the duty of such clerk to qualify any executor, administrator or guardian to the correctness of said account, and to examine such account and vouchers, and make a special report to the next court of ordinary of the correctness and reasonableness of such accounts. Upon which report the said court, shall either pass or reject such accounts, or any part thereof. And the said clerk is authorized to demand and receive for each account so examined by him, the sum of fifty cents; which sum shall be paid by the executor, administrator or guardian exhibiting such accounts for examination.

Fees allowed. SEC. IV. All laws and parts of laws heretofore passed, which militate against this act, are hereby repealed.

### *Guardian's Bond.*

STATE OF GEORGIA, } We, *John Doe* as principal, and *Richard Roe*  
*Houston* County. } as security, acknowledge ourselves held and bound to *John S. Jobson*, Ordinary of said County, and his successors in office, in the sum of *one thousand dollars*; subject to the following condition—

The condition of the above obligation is as follows: whereas, the above bound *John Doe*, has *this day* been appointed Guardian of the person and property of *John Stiles*, a minor of said County, son of *Robert Stiles*, deceased. Now, should said *John Doe*, well and truly demean himself, as Guardian as aforesaid, agreeably to letters of Guardianship bearing *even date* with this obligation, and agreeably to law, then this obligation to be void; otherwise, of force. This May 1, 1859.

Approved—  
*James Mack, J. P.*

JOHN DOE, *prin'l.* [L. S.]  
 RICHARD ROE, *sec'ty.* [L. S.]

### *Letters of Guardianship.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
*Houston* County. } To *John Doe* of said County—*Greeting*

Whereas, *John Stiles*, orphan of *Robert Stiles*, deceased, is intitled in his own right, to a considerable Estate, by means whereof the power of granting the guardianship of said *John Stiles*, to us is by law assigned. And for the better securing the Estate of said Orphan; and for his more ample maintenance and education; and from the integrity and confidence reposed in you, we do hereby commit the guardianship of said Orphan to you, the said *John Doe*, you assenting

thereto by your acceptance of these Letters. Herein charging you, that you maintain and cause to be educated, said Orphan in such manner as shall be suitable to his interest and circumstances, during his minority. And that you inquire into and take charge of his Estate, both real and personal; and all other things to do which by law you are required to do, for your said Ward. Of all which, a true and perfect account you shall render to the Court of Ordinary, as by law required, in every year during your continuance in office. And lastly, we do hereby constitute and appoint you, the said *John Doe*, Guardian of the person and property of said *John Stiles*, during his minority, or until the revocation of these Letters.

*Witness my hand and seal of office, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]

AN ACT for the better protection of the Estates of Orphans, and amendatory and explanatory of the second section of an act passed Feb. 18, 1790, and an act passed Dec. 15, 1810, entitled "an act for the more effectually securing the Probate of Wills, limiting the time for Executors to qualify, and Widows to make their Election;" and for other purposes therein mentioned.—*Approved Dec. 21, 1821.*

*Whereas*, doubts have arisen in the construction of the before-recited acts, as to the power of Courts of Ordinary to remove Executors, Administrators and Guardians from their respective trusts, where the authority has not been expressly given, to the injury of the Estates of Orphans and the delay of justice; for remedy whereof—

128. SEC. I. *Be it enacted*, That from and after the passage of this act, when such court shall know or be informed that any such guardian, executor or administrator, shall waste or in any manner mismanage the estate of such orphan or deceased person, or does not take due care of the education and maintenance of such orphan, [or deceased person,] according to his, her or their circumstances; or where such guardian, executor or administrator, or his, her or their securities are likely to become insolvent; or where such executor, administrator or guardian shall fail to make returns within the terms prescribed by law, particularly where no inventory and appraisement shall have been made and returned in terms of the law; said court are hereby required to order a rule to be served on such guardian, executor or administrator so in default, returnable to the next regular term of said court after the passing of the same; and upon the return of said rule being served, the court shall proceed to investigate all the actings and doings of said guardian, executor or administrator, as the case may be, and may and are hereby authorized and empowered to revoke the trust confided to him, her or them; or pass such other or further order as said court may think expedient and fit, for the better managing and securing such estate, and educating and maintaining such orphan. And upon the revocation of such letters testamentary, letters of administratorship or guardianship, suits by or against either shall not for this cause abate, but the removal being suggested of record, a *scire facias* may issue to make the successor of such removed person a party, at any time after the appointment and qualification.

Mismanagement or waste of Executor, Administrator or Guardian remedied.

129. SEC. II. It shall be the duty of, and the several clerks of the court of ordinary of this State, from and after the first day of January next, are hereby required to keep a regular docket, in bound books, of the names of such persons as are liable to make returns to said respective courts; and the justices thereof are hereby required to call the same regularly,

Suits not to abate upon removal of Guardian, Executor or Adminis'r.

Ordinary must keep docket, in which the names of Guardian, Executor and



Administrator and to make their entries therein, as is practised by the judges of the must be superior courts.  
entered.

130. SEC. III. For each and every term after the time aforesaid, the Clerk to be said clerks shall fail to comply with this act, they and each of them shall fined if he forfeit and pay the sum of thirty dollars; the one half for the use of the omits his county academy where such forfeiture may occur, and the other to the duty. informers.

AN ACT more effectually to secure the property of minors against the mis- management of their Natural Guardians, by requiring Bond and security, as in other cases of Guardianship, of such Guardian.—*Approved Dec. 22, 1823.*

Natural Guardian must give bond and security; if he refuses, what may be done. 131. From and immediately after the passage of this act, whenever any property shall descend to any child or children, whose father or mother shall be in life, either by virtue of the act of distribution, or of any will, deed or gift, such child or children shall be considered orphans, so far as to authorize the court of ordinary, executor or administrator, or trustee, as the case may be, to withhold such property from such natural guardian, until a reasonable security be given, (to be judged of by the court of ordinary,) for the faithful performance of said trust: *And provided further*, that if such natural guardian shall fail or refuse to give such bond and security, then and in that case, said court may appoint some other fit and suitable person to act as such; first compelling such person to give good and substantial security, as is now required in other cases of guardianship.

### *Bond of Natural Guardian.*

STATE OF GEORGIA, } We, *Thomas Willis* as principal, and *Richard Houston County.* } *Roe* as security, acknowledge ourselves held and bound to *John S. Jobson*, Ordinary of said County, and his successors in office, in the sum of *one thousand dollars*, subject to the following conditions—

The conditions of the above obligation are these—that whereas, *James Willis, Mary Willis, &c.*, minor children of *Thomas Willis*, are entitled to considerable property, by virtue of the will of their aunt, *Sarah Jones*, deceased. Now, should said *Thomas Willis*, Natural Guardian of said minor children, well and truly demean himself, as Guardian, as aforesaid, agreeably to law, and in all things, be faithful in the performance of said trust, then the above obligation to be void; otherwise, of force. This *May 1, 1859.*

Approved—  
*John S. Jobson, Ordinary.*

THOMAS WILLIS, *prin'l.* [L. S.]  
RICHARD ROE, *sec'ty.* [L. S.]

NOTE.—In cases of the above kind, as no Letters of Guardianship are required, or can issue, the Ordinary must enter up an order, upon the Guardian's filing his Bond, recognizing the Guardian as such. The oath usually taken by Guardians, although not specially required by the above statute, must be taken by the Natural Guardian, at the time of filing his Bond. The Guardian must have a certified copy of the Order.

### *Order by the Court.*

GEORGIA—HOUSTON COUNTY—*Ordinary's Office.*

Whereas, *Thomas Willis*, Natural Guardian of *James Willis, Mary Willis, &c.*, has filed in my office bond and security, approved by

me, as by statute required; and having taken the oath of office, he is to be recognized as Guardian, as aforesaid, of his said minor children, in securing their interests and rights, according to law.

*Witness my hand and seal of office, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]

AN ACT to make valid, binding and legal, all bonds given in this State by Administrators and Guardians, payable to the Court of Ordinary, members of the Inferior Court, Judges of the Inferior Court, Justices of the Court of Ordinary and Justices of the Inferior Court sitting for ordinary purposes, in any County in this State.—*Approved Dec. 17, 1825.*

132. All bonds or other instruments in writing, heretofore given, in order to secure the faithful administration of any testate or intestate's estate, or executors, or guardianship of the person and property, or the person or property of any minor or minors, or insane person or persons, orphan or orphans, made payable to the Court of Ordinary, Justices of the Court of Ordinary, Members of the Court of Ordinary, Members of the Inferior Court, Judges of the Court of Ordinary, Judges of the Inferior Court or Justices of the Inferior Court sitting for ordinary purposes, in any county in this State, not heretofore the subjects of adjudication, or not now under adjudication before any judicial tribunal having competent authority, be and the said bonds and instruments, so given as aforesaid, are declared binding, legal and valid, in any court of law and equity in this State, having cognizance of the same; against such administrator or administrators or executors, guardian or guardians, and his or their security or securities. And that in all cases not adjudicated as aforesaid, the said courts, justices, members or judges, shall be held, deemed and considered, legal obligees to such bonds.—[*See 164.*]

Various bonds made legal.

AN ACT to alter and amend the first section of an act entitled "an act to alter and amend the twelfth section of an act to Protect the Estates of Orphans, and to make permanent provision for the poor," assented to the 18th of December, 1816.—*Approved Dec. 23, 1826.*

133. It shall and may be lawful for the inferior courts in the several counties of this State, when sitting for ordinary purposes, to order a sale of such part or the whole of the real estate of every testator or intestate, on application of the executor, executors, executrix, administrator, administrators or administratrix, guardian or guardians, which shall be at public auction, and on the first Tuesday of the month, between the usual hours of sale, at the place of public sales in the county where such real estate may lie; [*see 171,*] first giving sixty days notice thereof in one of the gazettes of this State, and at the door of the court-house in the county where such sales are to be held; where it is made fully and plainly appear that the same will be for the benefit of the heirs and creditors of such estate: *Provided*, that a notice of such application for sale, be first made known in one of the gazettes of this State, at least four months before any order absolute shall be made thereupon.

Real Estate may be sold by Order of Court.

Notices must be given.

SEC. II. All laws and parts of laws militating against this act, are hereby repealed.

*Whereas*, doubts have arisen whether an administrator can manage an estate by keeping the property together, and working the same for the interest of said estate, and the administrators are, under the law, compelled to rent or hire out the property; for remedy whereof—

134. SEC. III. *Be it enacted*, That from and after the passing of this act, that intestate's estates may be so managed as shall, in the discretion of the administrator, under the direction of the inferior court sitting for ordinary

Discretion given Adm'rs in the management of Estates.



purposes, be deemed most advantageous for said estate. And that in all cases where any of the parties in interest shall make known to the court that the administrator is mismanaging any estate, said court shall immediately appoint three or more proper persons, who shall inquire into the situation of said estate, and report their decision to the next court, who shall make such order thereon as shall be deemed most to the interest of said estate.

### *Order by the Court.*

It appearing to the Court on the application of *Richard Roe*, Administrator of *John Doe*, deceased, that it will be for the interest of the Estate of the deceased, that the property composing said Estate, should be kept together and worked, under the direction of said Administrator: therefore ordered, that said Administrator have leave, and he is hereby authorized and permitted, to keep the property of said Estate together, and have it worked, under his direction.

AN ACT to amend an act for the better protection and security of Orphans and their Estates, passed on the 18th day of February, 1799.—*Approved* — 20, 1826.

Letters  
Dismissory,  
how granted  
to Guardians.

135. From and after the passage of this act, if any guardian heretofore appointed, or hereafter to be appointed, to any minor or minors, insane person or lunatic, should be desirous of obtaining letters dismissory from such guardianship, it shall and may be lawful for such guardian to apply to the court of ordinary whence his letters issued, and obtain an order *nisi*. requiring all persons concerned to appear at the next term of said court, to show cause why he, she or they, should not be dismissed from said guardianship.

Rule *nisi*. how  
obtained and  
published.

136. SEC. II. It shall be the duty of any guardian, so obtaining such order *nisi*., to publish the same for forty days, in one or more of the public gazettes of this State, having the most extensive circulation in the county where the application is made. And when it shall be shown to the court that such application has been made, it shall be the duty of said court, strictly to examine the returns, accounts and vouchers of such guardian, and take such further order, or grant letters dismissory, as the circumstances of the case may require.

What to be  
done with  
property in  
hands of re-  
tiring Guar-  
dian.

137. SEC. III. Whenever it shall be found that any guardian applying to be dismissed under the provisions of this act, shall have in his or her hands, any money, property or effects belonging to his or her ward or wards, the same shall be delivered to the court of ordinary, who by their clerk, or such other person as the court may deem proper, (willing to accept the same,) shall take charge thereof and manage the same for the benefit of such minor, lunatic or insane person, until the appointment of another guardian.—[*See* 185.]

Clerk to give  
bond.

138. SEC. IV. Whenever it shall become necessary for any clerk of the court of ordinary to take upon himself the duty of guardian as aforesaid, he shall give bond and security for the faithful discharge of his duty, as in ordinary cases of guardianship.

All Guar-  
dians must  
give bond and  
security.

139. SEC. V. After the passing of this act, it shall be the duty of the court of ordinary to require of all guardians, good and sufficient security for the faithful discharge of their duty as guardians, in a sum double the supposed value of the property belonging to the said ward or wards; payable to the inferior court sitting as a court of ordinary.

*Rule Nisi.*

GEORGIA—HOUSTON COUNTY—*Court of Ordinary, January Term, 1859.*

Whereas, *Richard Roe*, Guardian of the *person and property* of *John Doe*, a minor of said County, having fully discharged his trust, applies to be dismissed from his Guardianship, as aforesaid: therefore, all persons concerned are hereby notified and required to appear at my office, on or before the first Monday in *March* next, and show cause, (if any they have,) why said *Richard Roe* should not be dismissed from his said Guardianship.

*Given under my hand and official signature.*

JOHN S. JOBSON, *Ordinary.*

NOTE.—The above Rule must be published for forty days.

*Rule Absolute.*

Whereas, upon the application of *Richard Roe*, Guardian of the *person and property* of *John Doe*, a minor of said County, a rule *nisi*. was passed requiring all persons concerned to show cause why said application should not be granted, and said Guardian dismissed. And whereas, said rule *nisi*. has been published, according to law, and no cause has been shown to the contrary. And whereas, upon an examination of the returns, accounts and vouchers of said Guardian, it appears that the actings and doings of said Guardian are correct, and that he has fully discharged his trust: it is therefore ordered, that Letters Dismissory do issue to said Guardian, in conformity to law.

*Letters Dismissory.*

STATE OF GEORGIA, } By *John S. Jobson*, Ordinary of said County.  
Houston County. } *To all whom it may concern—Greeting.*

Whereas, *Richard Roe*, Guardian of the *person and property* of *John Doe*, minor, of said County, applied to be Dismissed from his Guardianship aforesaid. And whereas, the notices required in such case, have been given according to law, and no objection having been filed, against said application. And whereas, upon examination, it appears that the actings and doings of said Guardian, are correct, and that said Guardian has acted faithfully and honestly, and fully discharged his trust: therefore, the undersigned, in pursuance of the power vested in him by law, doth hereby discharge, exonerate and dismiss said *Richard Roe*, Guardian as aforesaid, and his securities, (saving and reserving the rights of said minor, and saving and reserving all acts of fraud committed by said Guardian, and which may hereafter be discovered,) from all and any future liability, in relation to his said Guardianship, whatever.

*Given under my hand and seal of office, April 1, 1859.*

JOHN S. JOBSON, *Ordinary.* [L. S.]

AN ACT to authorize the Court of Ordinary in the different Counties in this State to grant and issue Letters of Guardianship upon the persons and property of Illegitimate Children.—*Approved Dec. 18, 1827.*

140. From and immediately after the passage of this act, illegitimate



Illegitimate children may have Guardians.

children shall be placed upon the same footing with orphans, so far as to authorize and empower the different courts of ordinary within this State, to confide the management of their persons and property to guardians, in all cases where the said courts may deem it necessary. Any law, usage or custom, to the contrary notwithstanding.

AN ACT to alter and amend an act entitled “an act to alter and amend the twelfth section of an act to protect the Estates of Orphans, and to make permanent provision for the Poor, passed December 16, 1811.—*Approved Dec. 21, 1827.*

*Whereas*, by the above-recited acts the power is vested in the inferior courts of the several counties of this State, when sitting for ordinary purposes, to order the sale of the real estate of testators or intestates, upon application of executors, guardians or administrators, for the benefit of the heirs and creditors; no power is given to said courts to order the sale of any real estate belonging to orphans, other than such as is acquired by them from their testator or intestate, by reason of which frequent and manifest injury is sustained by orphans and others holding real estate, other than such as is acquired by descent; for remedy whereof—

All the real estate of certain persons may be sold.

141. *Be it enacted*, That from and after the passing of this act, the justices of the inferior courts in the several counties in this State, when sitting for ordinary purposes, shall be authorized to order a sale of any part, or the whole of the real estate of any orphan or orphans, lunatic or idiot, illegitimate or illegitimates, upon application of the executor or executors or executrix, administrator or administrators or administratrix, guardian or guardians, where it is fully and plainly [*made to*] appear that the same will be for the benefit of such orphan or orphans, idiot or lunatic, illegitimate or illegitimates, under the same rules and restrictions as are by law pointed out for the sale of real estates of testators or intestates.

SEC. II. All laws militating against this act, are hereby repealed.

AN ACT to authorize and require Administrators *de bonis non* on the estate of deceased Administrators, to be brought in by *Scire Facias* and made Defendants. Also, to prescribe the mode of effecting service of Orders of Court taken against Executors, Administrators or Guardians, who are alleged to be mismanaging the Estates they respectively represent.—*Approved Dec. 20, 1828.*

Administrator *de bonis non* may be made party.

142. From and after the passing of this act, it shall and may be lawful in all suits, either in law or equity, brought against a former administrator, on whose decease letters of administration *de bonis non* may be granted, to issue a *scire facias* to make such administrator a party at any time after the granting of such letters of administration *de bonis non*.

In cases of mismanagement by Administrator, &c. what may be done.

143. SEC. II. In all cases where an executor, administrator or guardian is alleged to be mismanaging the estate which they may respectively represent, and the court shall pass an order requiring such executor, administrator or guardian to show cause why such executor, administrator or guardian, should not be compelled to give security, for [*or*] such executorship, administration or guardianship [*be*] revoked; it shall and may be lawful for the sheriff of the county to effect service of a copy of such order personally on said executor, administrator or guardian, as the case may be, at least twenty days before the sitting of the court at which it is made returnable.

How service of Rule may be perfected.

144. SEC. III. In all such cases above alluded to, when the party against whom the said order shall be taken, shall remove out of the limits of the county or State, or absconds, or conceals himself, or stands in defiance of



a peace officer, it shall and may be lawful, on the return of the fact by the sheriff, to cause a publication of said order of court, to appear in some one of the public gazettes of this State, at least three times; and such publication shall be deemed an equivalent to such personal service.

SEC. IV. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to amend an act entitled "an act for the better protection of Orphans and their Estates," passed on the 18th day of February, 1799.  
*Approved Dec. 22, 1828.*

*Whereas*, doubts have been entertained whether an executor is entitled to any beneficial interest in his testator's estate, other than the commissions now allowed by law, for his care and trouble in the management of said estate; wherefore—

145. *Be it enacted*, That no executor or executors in this State, shall either at law or in equity, be entitled to any beneficial interest under and by virtue of the will or testament of their testator, not therein expressly mentioned, except their commissions, as now allowed by law; but they shall hold their residuum, or undivided real or personal estate, as a trustee for the distributees or next of kin of their deceased testator or testatrix. Executors have no interest in the Estates they manage but such as are expressed in the will.

146. SEC. II. If any widow or *feme sole*, after obtaining letters testamentary, of administration or of guardianship, shall marry, the letters so granted shall abate during the coverture; but the husband may be entitled to such letters upon his giving bond and security and taking the oath required by law; or the court of ordinary may in their discretion grant the same to any other person entitled thereto, according to the laws of this State.—[See 162.] Letters of Executrix abate on marriage.

147. SEC. III. When the justices of the inferior court or courts of ordinary, shall or may issue a rule *nisi*. against executors, administrators or guardians, a personal service by the sheriff or his deputy, or a copy of the rule shall be left by him at the executor's, administrator's or guardian's notorious place of abode; which shall be deemed a legal service. And the justices of the inferior court or court of ordinary, shall proceed to decide the cause, as if a personal service had been effected. And in case the party should have removed without the jurisdiction of the court, then a publication in one of the newspapers nearest his former place of residence, once a week for three weeks, shall be deemed a sufficient and legal notice. Service of Rule how perfected.

AN ACT to require the Clerks of the Court of Ordinary of the several Counties of this State, to record in their offices all Guardians' and Administrators' Bonds.—*Approved Dec. 18, 1829.* Bonds of Guardians and Administrators to be recorded, when and where.

148. SEC. I. From and after the passage of this act, it shall be the duty of the clerks of the court of ordinary of the several counties of this State, to record, in a book to be kept for that purpose, all guardians' and administrators' bonds, taken before the court of ordinary of their several counties, within six days after the same is executed.

SEC. II. All laws and parts of laws militating against this act, are hereby repealed.

AN ACT in addition to the acts concerning the Guardianship of Minors.—  
*Approved Dec. 19, 1829.*

*Whereas*, injury sometimes results to Slaves and Plantations belonging to Minors, from the practice of hiring and renting them indiscriminately, to the highest bidder. *And whereas*, it may sometimes be desirable to



keep such Slaves together, and have them worked for the benefit of said Minors—

Guardians may hire out slaves privately. 149. *Be it therefore enacted*, That guardians may exercise, under an order of the inferior court, sitting for ordinary purposes, a sound discretion in hiring slaves under their control, either publicly or privately, as may be most conducive to the safety and comfort of the slaves, and the permanent interest of the owners.

150. SEC. II. In cases in which it may manifestly comport with the safety and comfort of the slaves and the interest of the minors, the guardians may keep them together, and have them employed in such agricultural, or other operations, as said guardians may deem manifestly expedient, under a like order of said court.

Guardians may cultivate plantation for Ward's benefit. 151. SEC. III. When it may be manifestly expedient, guardians may cause plantations, or any part of them, belonging to minors, to be managed and cultivated for their benefit. And when minors may not be possessed of lands for cultivation, their guardians may apply such portion of their disposable funds as may properly be applied to that purpose, to the purchase of such reasonable portion of land, as may be necessary for the purposes of this act; or they may if expedient, rent lands for the same purpose, under a like order of said court.

Guardians must keep accounts and make returns. 152. SEC. IV. Guardians shall keep regular accounts of receipts and expenditures, in the discharge of their duties under this act; and make regular returns to the justices of the inferior courts, sitting for ordinary purposes, as required by the laws which now are, or hereafter may be, in force for the government of guardians.

### *Order by the Court.*

It appearing to the Court, on the application of *Richard Roe*, Guardian of the person and property of *John Doe*, a Minor of *Houston County*, that it will best conduce to the safety and comfort of the Slaves themselves, and to the interest and benefit of said Minor, that said Slaves should be hired out privately. [2. Or to keep said Slaves together, and employ them on the plantation of said Minor. 3. Or to cause the plantation of said Minor to be managed and cultivated for his benefit. 4. Or to purchase Land with such portion of the disposable funds of said Minor, as may be properly applied to that purpose. 5. Or to rent Land for the use and benefit of said Minor, as the case may be.] It is therefore, hereby ordered, that said *Richard Roe*, Guardian, as aforesaid, be authorized and directed to hire out privately, the Slaves of said Minor, for the year 1859.

AN ACT to authorize the Inferior Courts of this State, when sitting for ordinary purposes, to order the sale of any Slave or Slaves belonging to the Estates of Testators or Intestates, or Wards.—*Approved Dec. 21, 1829.*

Courts of Ordinary may order the sale of Slaves. When, how and where to be sold. 153. It shall and may be lawful for the inferior courts of the several counties in this State, when sitting for ordinary purposes, to order the sale of any slave or slaves belonging to the estate of any testator or intestate, or ward, on the application of the executor or executors or executrix; administrator, administrators, administratrix, or guardian or guardians; (which shall be at public auction, and on the first Tuesday of the month, between the usual hours of sale, at the place of public sales in the

county where the letters testamentary of administration or guardianship may have been granted; giving sixty days' notice thereof, in one of the gazettes of this State, and at the door of the court-house of the county, where such sales are to be held;) when it is made fully and plainly appear that the same will be for the benefit of the heirs and creditors of such estate, or of the ward of such guardian or guardians: *Provided*, that a notice of such application for leave to sell, be first made known in one of the public gazettes of this State, at least four months before any order absolute shall be made thereupon. Sale must appear to be necessary.

AN ACT to authorize Executors, Administrators and Guardians to have recorded all Receipts showing a final settlement with all or either of the Heirs and Distributors of the Estates they may represent, and to regulate their admission in evidence.—*Approved Dec. 22, 1834.*

154. From and after the passage of this act, it shall be the duty of the clerks of the superior courts of the respective counties in this State, to record all receipts showing a final settlement between any executor, administrator or guardian, and the heirs, wards or distributees of the estate the said executor, administrator or guardian may represent: *Provided*, said receipt has been attested by two witnesses, one of whom must be a justice of the peace, a judge of the inferior or superior court in this State. And such receipt, so recorded, shall be received in evidence, without further proof, in any of the courts in this State. Final Receipts to be recorded, and made evidence.

155. SEC. II. Whenever any executor, administrator or guardian shall make it appear that said original receipt is lost or destroyed, and that the same is not in his, her or their power, custody or control, then a copy of said receipt, certified to by the clerk where the original was recorded, shall be admissible as testimony, in any of the courts of law or equity in this State. Copy, evidence where the original is lost.

156. SEC. III. Nothing in the provisions of this act shall be so construed as to prevent any executor, administrator or guardian, from giving in testimony any receipt, after legal proof of its execution, though the same may not have been recorded. Any receipt may be given in evidence.

157. SEC. IV. The clerk shall receive as a fee for the recording of said receipt, the sum of fifty cents. Clerk's fee.

### *Final Receipt.*

STATE OF GEORGIA, } Received May 1, 1859, of *Richard Roe, Administrator of John Doe*, deceased, late of said County, *Houston County.* } *one thousand dollars*, in full, entire and complete satisfaction of all the right, claim, interest, property or demand, I now have, or might have, in and upon the Estate, real and personal, of said *John Doe*, deceased, *my father*. And said *Richard Roe, Administrator*, as aforesaid, is hereby fully and entirely discharged and acquitted, of any and all further claim on my part, against said Estate.

In witness whereof I have hereunto set my hand and affixed my seal, the day and year above written.

Signed, sealed and  
delivered, in presence of {  
*James M. Tait,*  
*James Mack, J. P.*

JAMES DOE, [L. S.]  
*Son of John Doe, dec.*



AN ACT to authorize the Guardians of Minors to receive, recover and remove from the State of Georgia, property belonging to their Wards; or to which they may be entitled; in cases where such Guardians and Minors both reside without the State; and to prescribe the mode of doing the same. *Approved Dec. 25, 1837.*

Non-resident  
Guardian may  
receive prop-  
erty of Ward  
in this State.

158. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for the guardian of any minor, child or children, residing out of the State of Georgia, who may have been appointed and qualified as such guardian in the State where such minor or minors reside, to ask, demand, receive, have and recover by due course of law, from any executor, administrator or guardian, now appointed and qualified, or that may hereafter be appointed and qualified, in the State of Georgia, any and all property, real, personal or mixed, of what kind soever, belonging to said minor, child or children, or to which they may be entitled, whether by gift, grant, devise, bequest or inheritance, unless the same be contrary to the terms, conditions or limitations of such grant, devise or bequest: *Provided*, that [*the guardian of*] such minor [*non*]-resident, shall first exhibit to the justices of the inferior court, when sitting for ordinary purposes, of the county in which such executor, administrator or resident guardian may reside or in which their administration or guardianship may be pending, satisfactory evidence that he or she is such guardian, and has given bond and security to the proper authority in the State where such minor or minors may reside, for the faithful execution of such guardianship, in double the amount of the value of the property in question, over and above the sum in which the said guardian may be bound for the guardianship of property then being in the State in which he may reside.

What such  
Guardian  
must show.

What will be  
proof of non-  
resident  
Guardian's  
qualifications  
to receive  
Ward's prop-  
erty.

159. SEC. II. The evidence which the said justices of the inferior court, sitting for ordinary purposes, shall require under the foregoing section of this act, shall be an exemplification from the records of the court in such other State, wherein such guardianship was granted, of all papers appertaining thereto, the certificate of the clerk of said court, (or ordinary, or judge of probates, where there is no clerk,) setting forth the sum in which such guardian hath given bond and security in that court, over and above the amount required by law for the guardianship of property already being in that State, and affirming the sufficiency of the security to the guardianship bond, authenticated agreeably to the act of Congress in such cases made and provided; which shall be recorded and filed in the office of the clerk of said court. And upon the exhibition thereof, to the said justices, sitting for ordinary purposes, at a regular term, and proof of twenty days notice of application to be then made, having been given to the opposite party, the said court shall pass an order, requiring the executor, or administrator or resident guardian, so notified, to pay over and deliver to said non-resident guardian, all the property, real, personal and mixed, of what kind soever, to his ward or wards, belonging and being in his or their hands. And a receipt therefor, with a schedule thereof, signed by said non-resident guardian, shall be delivered to said executor, administrator or resident guardian, and shall be a sufficient voucher to the said court, in settlement or final return. And a duplicate of said receipt and schedule shall be delivered to said court, and filed and recorded in said office.

Non-resident  
Guardian may  
sue for prop-  
erty.

160. SEC. III. It shall and may be lawful for said court to enforce such order as provided in the second section of this act, as in other cases. But said non-resident guardian may also, after the obtaining of such order, sue for and recover from such executor, administrator or resident guardian, at law or in equity, any and all such property not so delivered, and all moneys due, wasted or invested. And the said non-resident guardian may remove



to the State of his ward's residence, all the personal property so received or recovered.

161. SEC. IV. The said justices of the inferior court, sitting for ordinary purposes, may in their discretion, order the sale of any real estate by such non-resident guardian, as in other cases. And may sell real estate.

SEC. V. [Repealed, *see* 268.]

SEC. VI. [Repealing section.]

AN ACT to amend and explain the second section of an act passed on the 22d December, 1828, entitled "an act to amend an act entitled an act for the better protection of Orphans and their Estates," so far as relates to suits against Executrixes in their own wrong.—*Approved Dec. 21, 1839.*

162. SEC. I. *Be it enacted*, That nothing in the said second section of said act contained, shall be held or so construed, as to abate any suit commenced against any *feme sole*, as executrix in her own wrong, who may have married after the institution of said suit. But upon the suggestion of said marriage, parties shall be made and the cause shall proceed as at common law. Suits against Executrix in her own wrong, not to abate.

AN ACT for the relief of Executors, Administrators and Guardians in certain cases, and to prescribe and define additional duties and liabilities of the Clerks of the several Courts of Ordinary of this State.—*Approved Dec. 22, 1840.*

163. SEC. I. *Be it enacted*, That from and after the passage of this act, when any executor, administrator or guardian shall have given and published the notice now required by law, of his or her application to the proper court for letters of dismission from his or her trusts, as such executor, administrator or guardian, and it shall appear that there are any moneys in his or her hands, due the estate of his or her testator, intestate or ward, and no person claiming the same, such court shall in their discretion, pass an order authorizing said executor, administrator or guardian, to retain the amount in his or her hands until the further order of the court, at an interest not exceeding four per cent. per annum. Or requiring him or her to deposit said amount in such solvent bank as the court may direct, subject to the order of the court. And on complying with the order of said court, in relation to such deposit, and producing a certificate thereof from the proper officer of such bank, such executor, administrator or guardian, as the case may be, shall be entitled to a dismission, as the law now provides. Any law, usage or custom to the contrary notwithstanding: *Provided*, the said money so deposited, shall in all cases, be in specie or its equivalent, at the option of the bank, which shall be liable to pay specie in return. Money in hands of Executor, Administrator or Guardian, applying for dismission, how disposed of.

AN ACT to declare and make valid, binding and legal, all Bonds given, or that may hereafter be given in this State, by Administrators and Guardians, payable to the Court of Ordinary, Members of the Inferior Court, Judges of the Inferior Court, Justices of the Court of Ordinary, Judges of the Inferior Court sitting for ordinary purposes, Judges of the Court of Ordinary and Justices of the Inferior Court sitting for ordinary purposes, in any County in this State.—*Approved Dec. 8, 1841.*

164. SEC. I. *Be it enacted*, That all bonds or other instruments in writing heretofore given, or that may hereafter be given, in order to secure the faithful administration of any testate or intestate's estate or estates, or the guardianship of the person and property, or the person or property of any minor or minors, or insane person or persons, orphan or orphans, made payable to the court of ordinary, members of the inferior court, judges of Administrators' and Guardians' bonds given in various forms, declared binding and valid.



the inferior court, justices of the court of ordinary, judges of the inferior court sitting for ordinary purposes, judges of the court of ordinary, or justices of the inferior court sitting for ordinary purposes, in any county in this State, not heretofore the subjects of adjudication, or not now under adjudication before any judicial tribunal having competent authority, be and the said bonds and other instruments so given as aforesaid, or that may hereafter be given, are declared binding, legal and valid, in any court of law and equity in this State, having cognizance of the same, against such administrator or administrators, executor or executors, guardian or guardians, and his, her or their security or securities. And that in all cases not adjudicated as aforesaid, the said courts, justices, members or judges, shall be held, deemed and considered legal obligors [*obligees*] to such bond.

Formal variance works no detriment.

165. SEC. II. No formal variance in any part of the aforesaid bonds or other instruments that have been, or may be given, shall in any wise impair or destroy the validity thereof; but each and every of the said bonds or other instruments that have been, or may hereafter be given, shall be construed according to the true intent and meaning thereof. Any law, usage or custom to the contrary notwithstanding.

AN ACT to amend the law authorizing Executors, Administrators and Guardians to make Annual Returns.—*Approved Dec. 28, 1843.*

Security may verify returns of absent principal.

166. *Be it enacted*, That from and after the passage of this act, the annual returns of administrators, executors and guardians, may be verified by the affidavit of the security of the same, when the said executor, administrator or guardian shall reside beyond the limits of this State. Any law to the contrary notwithstanding.

AN ACT to authorize the investment of Trust-Funds in State stocks, or other State securities; to provide for the sale or disposition thereof, and to exempt the same from taxation.—*Approved Dec. 17, 1845.*

Trust-funds may be vested in State stocks

167. SEC. I. *Be it enacted*, That from and after the passage of this act, any executor, executrix, administrator, administratrix, guardian or trustee, who may hold any trust-funds, shall be authorized to invest the same in stocks, bonds or other securities, issued by the State: *Provided*, that he or she shall, within twelve months thereafter, make a legal return thereof, in which shall be set forth the price paid, the time when and the name of the person from whom they may have been purchased.

Courts may direct the investment of funds.

168. SEC. II. It shall and may be lawful for the superior, inferior or other courts of this State, to authorize the investment of such funds as may be under their control, or in their custody, and be the subject of litigation, in stocks, bonds or other securities issued by this State, under such terms as may be prescribed in an order for that purpose.

Stocks may be sold, under certain circumstances.

169. SEC. III. It shall and may be lawful for the superior court of any district, to grant an order for the sale of any such stocks, bonds or other securities, as may be purchased under the first section of this act, upon the application of the person making such investment, when such sale shall be necessary to discharge, or pay in part, any claims on the fund so invested.

Trustees' liability removed.

170. SEC. IV. All investments made in conformity with this act, shall be exempt from taxation, and the person making the same shall be relieved from liability, so far as relates to the amount invested, on delivering to the person or persons to whom he or she may be legally responsible, such stocks, bonds or securities, unless sold by order of court, and paying or accounting for the interest received thereon.



AN ACT to authorize Administrators, Executors or Guardians to exercise discretion in selling lands which may be divided by County lines.—*Approved Dec. 20, 1845.*

171. SEC. I. *Whereas*, it often happens that a tract or lot of land is divided by a county line passing through said land, and under the existing laws now in force in relation to administrators' sales, makes it the duty of administrators, executors or guardians to sell all lands in the county where it lies, which often causes unnecessary expense and trouble; for remedy whereof—

*Be it enacted*, That in all cases where any administrator, executor or guardian, has land to sell as administrator, executor or guardian, and such land is composed of one lot or tract, and such lot or tract of land is divided by a county line, then and in that case, the administrator, executor or guardian, shall have the right to sell said tract or lot of land in either one of the counties, by advertising it in the county where it is to be sold, agreeably to the law now in force.

Lands divided by County line may be sold in either County.

SEC. II. All laws or parts of laws militating against this act, are hereby repealed.

AN ACT to be entitled an act to define the rights and powers of Administrators *de bonis non*.—*Approved Dec. 27, 1845.*

172. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any executor or administrator may have been heretofore or may be hereafter removed, or depart this life, chargeable to the estate which he or she represented, it shall be the duty of such removed executor or administrator, or the representatives of such deceased executor or administrator, to account fully with the administrator "*de bonis non*," who may be appointed to finish the administration of such estate.

Representative of dec'd Administrator, etc. must account to Administrator *de bonis non*.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to give Mothers certain rights in relation to the Guardianship and custody of their Minor Children.—*Approved Dec. 27, 1845.*

173. SEC. I. *Be it enacted*, That in all cases where a father shall depart this life, leaving his widow and a minor child or minor children him surviving, without appointing a testamentary guardian for his said minor children, that the guardianship and control of the persons of said children shall vest in their mother, so long as she continues unmarried: *Provided*, that nothing herein contained shall prevent the justices of the inferior court from dismissing said mother from her guardianship, upon just cause shown.

Mother, Guardian of minors in certain cases.

174. SEC. II. In all cases where a controversy may arise on the return to a *habeas corpus*, in relation to the custody of the persons of minor children, the common-law rule vesting said custody always in the father, shall be abolished. And it shall be within the discretion of the judge of the superior courts, or justices of the inferior courts, or a majority of them, in the absence of the judge of the superior court, to award the custody of said minor or minors, either in the father or mother, as may appear most beneficial to the interest of said children.

Common-law rule in favor of father abolished.

175. SEC. III. Widows shall have the power, by will, to appoint testamentary guardians for such children as have no guardian.

Widow may appoint Guardians.

AN ACT more effectually to define and make uniform the liability of Guardians, Executors and Administrators, in regard to the interest to be charged against them.—*Approved Dec. 29, 1847.*

*Whereas*, the practice in the several circuits of Georgia is different and



conflicting in regard to the interest chargeable against guardians, executors and administrators; for remedy whereof—

Rate of interest to be paid by Executors, Administrators and Guardians, heretofore appointed. 176. SEC. I. *Be it enacted*, That from and after the first day of January, eighteen hundred and forty-eight, the interest to be charged and computed against guardians, executors and administrators, already appointed and qualified, on trust funds in their hands, shall be at and after the rate of seven per cent. per annum, for the first six years thereafter, without compounding. And after the expiration of the said six years, from the said first of January, eighteen hundred and forty-eight, the computation of interest shall be at and after the rate of six per cent. per annum, to be compounded at that rate annually thereafter.

Administrators, Executors and Guardians subsequently appointed, pay the same rates. 177. SEC. II. The rate of interest to be charged and computed against executors, administrators and guardians hereafter to be qualified and appointed, shall be at and after the rate of seven per cent. per annum, without compounding, for six years from the time of their qualification or appointment. And after the termination of the said six years, the computation of interest to be charged against them, shall be at and after the rate of six per cent. per annum, to be compounded at that rate annually thereafter: *Provided*, that nothing in this act shall be so construed as to prevent executors, administrators, guardians and trustees from investing funds in State stock or other State securities, as provided for by an act of the last legislature.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to allow additional compensation to Executors, Administrators, Guardians and Trustees, in certain cases.—*Approved Dec. 29, 1847.*

*Whereas*, the trust estate in the hands of executors, administrators, guardians and trustees is often in land and negroes, and worked together for the benefit of the parties in interest. *And whereas*, in such cases the commissions allowed by law is inadequate compensation—

Additional compensation allowed, in certain cases, to Executors, Administrators, Guardians and Trustees. 178. SEC. I. *Be it enacted*, That from and after the passage of this act, in all cases where an executor, administrator, guardian or trustee shall have the control and management of land and negroes, working them for the benefit of the parties in interest; or of negroes which are hired out from year to year, it shall and may be lawful for the court of ordinary in the county where such executor, administrator, guardian and trustee may reside or make his returns, (the whole number of said court concurring therein,) to allow them from such estate, such further and additional compensation, as in the discretion of said court shall seem just and proper: *Provided always*, that nothing in this act contained shall prevent the parties in interest from contesting the reasonableness of such allowance in any suit tried in any of the superior courts of this State, under the same rules and restrictions as now govern said superior courts in reviewing the action of the court of ordinary.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to authorize Executors and Administrators and Guardians, to sell at public outcry, all Notes, Bonds and other obligations, and other evidences of debt, due the Estate of their Testators or Intestates or Wards, that may be considered insolvent or doubtful of collection.—*Approved Feb. 22, 1850.*

Insolvent or doubtful debts. 179. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall be lawful for executors, administrators and guardians in this State,

by and with the consent of the court of ordinary in the county where their letters of administration, or testamentary, or letters of guardianship were granted, to sell at public outcry, to the highest bidder, at the court-house door, in said county, on the first Tuesday in the month, and within the legal hours of sheriff sales, first giving thirty days' notice thereof, in one of the public gazettes of this State, and at the court-house door, and three of the most public places in said county, by advertisements, all such notes, bonds and other obligations, and other evidences of debt, belonging to the estate of their testator or or intestate or ward, as may be considered and adjudged by said executor or administrator and said court, as insolvent or doubtful.—[See 208.]

may be sold  
by order of  
Court.

180. SEC. II. The return to the court of ordinary of the amount for which said notes, bonds or obligations, and other evidences of debt, was so sold, and accounting for the same, shall be a full discharge of all liability of the executor or administrator or guardian, for said notes, bonds, obligations and other evidences of debt: *Provided*, the same was fairly and *bonâ fide* sold; and provided further, that such executor, administrator or guardian, shall not be, either directly or indirectly, interested in such purchase.

Returns must  
be made.

181. SEC. III. All executors, administrators and guardians, shall have full power and authority, in the collection of claims belonging to the testator or intestate or the ward, to pay such fee or reward therefor as the court of ordinary or superior court, by order, may allow; to be retained out of any funds in his, her or their hands respectively. Any law, usage or custom, to the contrary notwithstanding.

May pay At-  
torney's Fees.

### *Executor's Sale of Insolvent Papers.*

STATE OF GEORGIA, } Agreeably to an order of the Court of Ord-  
Houston County. } nary, will be sold at the court-house door, in the  
town of *Perry*, in said County, on the first Tuesday in *May* next, be-  
tween the lawful hours of sale, to the highest bidder, the following  
*Notes, Bonds and Accounts*, belonging to the Estate of *John Doe*, de-  
ceased.

1 *Note of Charles Smith* for one hundred dollars, with interest there-  
on for three years.

1 *Bond on John Sanders* for five hundred dollars, with interest there-  
on for six years.

1 *Account on Peter Neverpay* for forty dollars, due 1st *January*, 1856,  
&c.

RICHARD ROE, *Executor*.

This *April* 1, 1859.

AN ACT to amend the laws relating to Guardians, Executors and Adminis-  
trators.—*Approved Feb. 22, 1850.*

182. SEC. I. *Be it enacted*, From and after the passage of this act, all persons desiring to take the guardianship of any child or children under the age of fourteen years, other than his or her own children, shall make application to the clerk of the court of ordinary, who shall cause a citation to be published in some public gazette of this State, at least thirty days before such letters shall be granted: *Provided*, that the court to whom such application may be made, shall have the power, after the expiration of said

Application  
for Guardian  
ship.



notice, to grant such letters of guardianship either to the applicant, or to such other persons, as in the discretion of said court may be proper.

Ordinary's  
fees.

183. SEC. II. The clerks of the courts of ordinary of the several counties of this State, shall receive for their fees, the same as are allowed by law, in case of applications for letters of administration.

Party may  
qualify in  
vacation.

184. SEC. III. After an application for letters of administration or of guardianship has been granted; or when a will has been proved, and the securities required by law, named to and approved by, the courts of ordinary, in the order passed, it shall and may be lawful for any such guardian, administrator or executor, to qualify in vacation, before the clerk of the court of ordinary, by taking the oath required by law, and to receive from said clerk, letters of guardianship, of administration, or testamentary: *Provided*, that before such qualification, the bonds required shall be executed by the party, and the securities that have been approved, in the presence of, and be attested by, said clerk. And said bonds, so executed and delivered to said clerk, shall be good and effectual in law, to all intents and purposes.

Letters of dis-  
mission not  
final against  
Minors.

185. SEC. V. From and after the passage of this act, a discharge or dismissal of an executor, administrator or guardian, by any court of ordinary of this State, from his, her or their duty as such, shall not be held as final and conclusive against any heirs, distributees or wards, who were minors at the time of such discharge: *Provided*, said minors, within five years after he, she or they become of the age of twenty-one, or have all legal disabilities removed, shall commence suit against such executor, administrator or guardian.

SEC. VI. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### *Citation by the Ordinary on Application for Guardianship.*

STATE OF GEORGIA, } Whereas, *John Doe* applies to the undersigned  
Houston County. } for Letters of Guardianship of *the person and property* of *James Roe*, minor, son of *Richard Roe*, deceased; these are therefore, to require all persons concerned, to file in my office, on or before the first Monday in *May* next, their objections, (if any they have,) to said appointment, otherwise Letters of Guardianship will be granted the applicant.

*Given under my hand and official signature, this April 1, 1859.*

JOHN S. JOBSON, *Ordinary.*

AN ACT to authorize Executors, Administrators and Guardians, to make returns to the Court of Ordinary of the County of their residence, and to be discharged from their trust therein.—*Approved Feb. 22, 1850.*

Benefits of the  
Act of 1812,  
extended to  
all Executors,  
Administrators  
and  
Guardians.

186. SEC. I. *Be it enacted*, That the provisions of the second section of the act passed on the tenth day of December, eighteen hundred and twelve, which authorizes executors, administrators and guardians, whose residences may be changed, to make returns to the court of ordinary of the county of their residence, on complying with certain prerequisites, shall be applicable to, and may be availed of, by any executor, administrator or guardian, who may at the time of his appointment and qualification, reside in a different county from that in which letters testamentary, of administration or of guardianship may be granted.



187. SEC. II. Any such executor, administrator or guardian, availing himself of the provisions of this act, or of the said recited section, shall be liable to the same proceedings in the court of ordinary to which his returns may be made, as if he had been appointed and qualified in said court, and shall be dismissed from his trust in and by said court, upon his complying with the terms of the law, in relation to letters dismissory.

Liable to Court where returns are made.

AN ACT to regulate the Returns of Executors, Administrators and Guardians.—*Approved Feb. 22, 1850.*

*Whereas*, by the act of 1792, executors and administrators are required to make their annual returns to the courts of ordinary by the tenth day of January in each year, embracing all transactions of the estate they represent, up to the thirty-first day of December, immediately preceding. *And whereas*, by other statutes a different time seems to be fixed, within which said returns shall be made. And a difference existing in different counties, in reference to the time of making said returns. And the supreme court having determined that an executor or administrator failing to make his annual returns, shall forfeit his commissions on the whole estate; in order to settle said practice, and save executors and administrators from loss of commissions, when acting without faults—

188. SEC. I. *Be it enacted*, That executors, administrators and guardians, shall be permitted to make their annual returns, required of them, by the first Monday in July, of each and every year. Any law to the contrary notwithstanding.

Returns may be made by the first Monday in July.

189. SEC. II. When from providential cause, any such trustee shall fail to make returns by the time specified, the inferior court when sitting for ordinary purposes, may by special order on their minutes, save them from all penalty of forfeitures of commissions, on account of failing to make said returns within said time.

Providential hinderance, provided for.

190. SEC. III. If any executor, administrator or guardian, shall fail to make a return within the time required by law, he shall not lose the commissions on any returns made in due time.

Commissions on returns made.

AN ACT to alter and amend an act entitled “an act to authorize and empower Executors and Administrators to make Titles to Land, in certain cases,” approved February the 15th, 1799.—*Approved Feb. 14, 1850.*

191. SEC. I. *Be it enacted*, That in all cases contemplated by the act, entitled an act to authorize and empower executors and administrators to make titles to land in certain cases, approved on the fifteenth day of February, in the year seventeen hundred and ninety-nine, be so far changed, as in no instance to require more than the judgment of the court of ordinary of the county where the executor or administrator may reside at the time of the commencement of the suit, to authorize or empower him to make title. And that it shall not be necessary to obtain the concurrence of the court of ordinary in addition thereto, of the county where the deceased resided at the time of his death, as contemplated by the aforesaid act, to authorize or empower the executor or administrator to make such title. And that all laws or parts of laws militating against this act, be and the same are hereby repealed.

Order of the Court where the party resides, sufficient, in making Titles to land.

Executors, Administrators and Guardians in other States, may bring suits in this.

AN ACT to authorize the legal representatives of Intestates and Testators of other States, and Guardians, to sue in this State.—*Approved Feb. 23, 1850.*

*Whereas*, it frequently happens that persons depart this life in another State, owing judgments, bonds, mortgages and other specialties, and promissory notes, bills-of-exchange and other evidences of debt and divers



causes of action, against citizens of this State. And by the existing laws suits cannot be brought in this State, for the recovery of their rights, without some inhabitant of this State first takes out letters of administration upon the estate of such deceased persons; and for remedy whereof—

Executors,  
Administra-  
tors and  
Guardians in  
other States,  
may bring  
suits in this.

192. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for any administrator or administrators and administratrix, for any executor or executors and executrix, or guardian, of any deceased person or persons who may have departed this life in another State, and a citizen, or citizens of such other State, at the time of their decease, owning at said time, any judgments, bonds, mortgages and other specialties, and promissory notes, bills-of-exchange, and other evidences of debt, and any other cause of action against citizens of this State, to institute suit in his, her or their name, for the recovery of the same, in any of the courts of this State, which by law have jurisdiction of the subject-matter: *Provided*, said legal representatives shall on or before the judgment term of the court to which such suit or suits are brought, file in said court a legally authenticated exemplification of his, her or their letters of administration, or letters testamentary, or letters of guardianship, according to law, to be used on the trial.

And may  
resort to all  
other reme-  
dies.

193. SEC. II. Said plaintiffs, his, her or their agent or attorney-at-law, may use any of the common-law or statutory means or remedies, now in force in this State, by complying with the distinct provisions of said laws, as other plaintiffs.

SEC. III. All laws or parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to point out the mode of paying Commissions to Administrators, Executors and Guardians, and for other purposes therein named.—*Approved Jan. 19, 1852.*

*Whereas*, it is doubtful according to present laws, whether executors, administrators and guardians, are entitled on death, removal or discharge, to commissions for paying out the estates of which he or she or they are executors, administrators or guardians. *And whereas*, it is also doubtful, when any after-appointed executors, administrators or guardians, are entitled to any commission for receiving said estates; for remedy whereof—

No commis-  
sions allowed  
to deceased  
Administra-  
tor's.  
Estate for  
paying out,  
nor to succes-  
sor for receiv-  
ing.

194. SEC. I. *Be it enacted*, That hereafter, when any executor, administrator or guardian shall die, or be removed or discharged from office, before he, she or they shall have administered or paid over the estate of which he, she or they, are executor, administrator or guardian; then and in that case, said executor, administrator or guardian, or representative of any deceased executor, administrator or guardian, shall receive no commission on the money or effects which he, she or they, shall pay to his, her or their successor or successors. And that no after-appointed executor, administrator or guardian of said estate or ward, shall be entitled to any commission on the money or effects which he, she or they shall receive from his, her or their predecessor, or the representative of his, her or their predecessor.

Extra pay  
allowed.

195. SEC. II. *And be it further enacted*, That the court of ordinary, shall in all cases arising under this act, allow such extra pay for extra services, as may be by them deemed equitable and just.

SEC. III. *And be it further enacted*, That all laws and parts of laws, militating against this act, be and the same are hereby repealed.

AN ACT to compensate Executors, Administrators and Guardians in certain cases.—*Approved Jan. 20, 1852.*



196. SEC. I. *Be it enacted*, That where executors, administrators or guardians, in the discharge of their duty, have been required, or shall be required, to travel out of the county of their residence, the court of ordinary shall allow to them the amount of their actual disbursement, to be ascertained by the statement of the executor, administrator or guardian, on oath; and shall also allow them a reasonable compensation for the time devoted to the service, to be adjudged by the court: *Provided*, said court shall be satisfied that such attention and service was necessary to the interest represented, and that such allowances shall be subject to revision by a court of equity, as heretofore in similar cases.

For travelling  
out of County,  
extra pay  
allowed and  
expenses.

AN ACT to secure the property of Minors against the mismanagement of their Guardians, by requiring bond and security.—*Approved Jan. 22, 1852.*

197. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any child or children shall have any guardian, by statute appointed, or by the deed or will of the father or mother of said child or children, and any property shall descend to said child or children by virtue of the act of distributions; or of any will, deed or gift, other than from said parents, it shall be the duty of the court of ordinary, executors, administrators or trustee, as the case may be, having the control of said property, to withhold said property from said guardian, until bond and good security be given, as in other cases of guardianship; (to be judged of by the court of ordinary,) for the faithful performance of said trust: *Provided*, that if such guardian shall fail or refuse, to give such bond and security, then and in that case, said court may appoint some other fit and suitable person, to act as such, first compelling said person to give bond and security, as is now required in other cases of guardianship.

Testamentary  
and natural  
Guardians  
must give  
bond and  
security.

SEC. II. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to alter and amend an act entitled “an act to protect the Estates of Orphans and to make permanent provision for the Poor,” approved December 18th, 1792, so far as relates to the amount of the Bond to be given by Administrators. Also, to authorize the sale of Real Estate of free persons of color, and to provide for the disposition of the proceeds.—*Approved Jan. 22, 1852.*

198. SEC. I. *Be it enacted*, That from and after the passage of this act, every administrator shall be required to give bond, with good and sufficient security, in a sum equal to double the amount of the estate they shall be appointed to administer.

Amount of  
Administrator's  
bond.

199. SEC. II. That all the laws of this State, applicable to the sale of real estate of minors, in the hands of guardians, (shall apply to and govern the sale of real estate, owned by free persons of color, by their guardians,) to be observed and conformed to. And no sale shall be valid without the permission of the court of ordinary, which court shall prescribe the mode, and property, in which the proceeds shall be disposed of or invested.

Real Estate of  
free persons of  
color may be  
sold.

SEC. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.

AN ACT to amend an act, relative to Guardians of Minors receiving and recovering property belonging to their Wards, assented to 25th of December, 1837.—*Approved Jan. 12, 1852.*

200. SEC. I. *Be it enacted*, That it shall not be lawful, by virtue of any thing in said act contained, for any foreign guardian to receive or re-

Foreign Guar-  
dian may not  
remove the



property of  
Ward if it be  
shown that he  
is incompe-  
tent, etc.

cover any property from any guardian of person and property, or person or property, appointed by the laws of this State; or from any testamentary guardian, when the said guardian, or any friend of the ward or wards, shall by affidavit, suggest that the said foreign guardian is an incompetent person to take charge of such ward or wards, or his or their property; or that the security given by him is insufficient; or that the removal of the property would be injurious to the interest of such ward. And whenever such affidavit is made, the court before whom the application of said foreign guardian is made, may receive proof, other than that set forth in the said act of 1837, of the competency of the said foreign guardian; of the sufficiency of his security, and the injury likely to accrue by the removal of the property. And upon an issue being made and proof adduced to the satisfaction of the court, that the said foreign guardian is incompetent, or his security insufficient, or that the removal of the property will be injurious to the interest of the ward, the application of the said foreign guardian shall not be granted. Any law, usage or custom to the contrary notwithstanding.

AN ACT to authorize Guardians of Minors to invest surplus funds belonging to their Wards, in slave property, under certain conditions. [And Ann T. Whitfield, of the County of Troup, Administratrix on the estate of Horatio Whitfield, deceased, to sell or buy land, on account of said estate.]—*Approved Feb. 17, 1854.*

Guardian  
having sur-  
plus funds  
may invest  
the same by  
order of  
Court.

201. SEC. I. *Be it enacted*, That in all cases after the passage of this act, in which the guardian of any minor or minors in this State, shall have in his or her hands, as such guardian, surplus funds belonging to his or her ward, it shall be lawful for such guardian, to lay out and invest the same, or any part thereof, in the purchase of such slave or slaves, as in the judgment of such guardian, shall be advantageous to the interest of his or her ward: *Provided*, that no such investment shall be made except by the approval of the ordinary in the county where such guardian shall make returns. And that a full account of the price paid, the time when and the name of the person from whom such purchase is made, shall be set forth in the returns of such guardian.

SEC. III. That all laws and parts of laws repugnant to this act, be and the same are hereby repealed.

### *Order by the Court.*

It appearing, on the application of *John Doe*, Guardian, of *James Roe*, Minor, of the said County, that said Guardian has in his hands *five thousand dollars*, surplus funds. And it further appearing, that it will be for the interest of the said Minor that said funds should be invested in *Slaves*; therefore, it is hereby ordered, that said Guardian have leave to invest said fund in the purchase of *Slaves*, for the use and benefit of said Minor.

AN ACT to allow Executors, Administrators and Guardians, to resign their trusts upon certain conditions.—*Approved Feb. 10, 1854.*

Executor,  
Administrator  
and Guardian  
may resign.

202. SEC. I. *Be it enacted*, That upon application by any executor, administrator or guardian, (to the court of ordinary of the county to which he is responsible,) for leave to resign his office, because of age, infirmity, or removal from the county, it shall be lawful for the ordinary, upon such



cause to him shown; and it appearing that it would be to the interest of those concerned, to allow the same to be done, to grant an order dismissing such executor, administrator or guardian, and discharging him from all further liabilities; and to make such further order in relation to allowing commissions and settling up with his successor, as may be right and proper: *Provided*, the applicant, in every case, shall give two months' notice of his intended application, in such public gazette as the ordinary may direct; and shall also, by petition in writing, state the grounds of his application and swear to the truth of the same.—[*See two next Acts.*]

Notice,  
Petition, and  
Affidavit.

AN ACT to amend an act entitled "an act to allow Executors, Administrators and Guardians, to resign their trusts, on certain conditions," approved February 10th, 1854.—*Approved Dec. 21, 1857.*

203. SEC. I. *Be it enacted*, That the above-recited act be so amended as to allow guardians to resign their trusts when their wards shall arrive at the age of fourteen years; and shall, with the consent of said guardian and the ordinary of the county, choose another guardian, upon the same terms as now provided for in said act.

Guardians  
may resign  
when Ward  
14 years old.

AN ACT to enable Executors, Executrixes, Administrators, Administratrixes and Guardians, to resign their trusts, under certain circumstances.—*Approved Dec. 21, 1857.*

*Whereas*, it often becomes important to the interests of legatees, devisees and distributees of estates, that Executors, Executrixes, Administrators, Administratrixes and Guardians, should be permitted to resign their trusts, provided a fit and suitable successor can be found who will accept the trust, and who will be acceptable to the ordinary, as competent and responsible. And there being no provision for such cases by the existing laws; for remedy whereof—

204. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall and may be lawful for any executor, executrix, administrator, administratrix or guardian, to resign his or her trust; provided he or she can get some suitable person to accept his or her office, who shall be acceptable to the ordinary of the county where such application is made. Such successor in office to comply with existing laws, as to giving bond, taking oath, &c.

Suitable person being  
presented,  
Ex'tor, etc.,  
may resign.

205. SEC. II. That any persons availing themselves of the provisions of this act, shall forthwith deliver all property, and pay all money, held by him or her, in such fiduciary character, to his or her successor, under the supervision and with the consent and approval of the ordinary of the county, having jurisdiction of the executor, executrix, administrator, administratrix or guardian; and upon such full and fair accounting and payment, shall be discharged, but not otherwise.

Ex'tor, etc.,  
resigning,  
fully to account with  
Ordinary and  
successor.

206. SEC. III. That such person so availing him or herself of the provisions of this act, shall in no case, charge or be entitled to any compensation for turning over property, or paying the money held by him or her, to their successor.

207. SEC. IV. That in all cases where an executor, executrix, administrator, administratrix or guardian, resigns his or her trust, his or her successor shall give bond in double the amount of the estate to be turned over by the executor, executrix, administrator, administratrix or guardian resigning his or her trust, the securities to be judged of by the ordinary.

Successor to  
give Bond in  
double the  
amount.

SEC. V. [Repeals conflicting laws.]



*Notice of Application to Resign.*

STATE OF GEORGIA, } *To all whom it may concern.* Notice is here-  
*Houston County.* } by given, that two months from this date,  
 I shall apply to the Court of Ordinary of said County, for leave to re-  
 sign my trust as *Administrator* upon the Estate of *Richard Roe*, de-  
 ceased, on account of my *advanced age*. This *January 1, 1859*.  
 JOHN DOE.

*Petition of the Applicant.*

STATE OF GEORGIA, } To the Court of Ordinary of said County.  
*Houston County.* } The Petition of *John Doe, Administrator* upon  
 the Estate of *Richard Roe*, deceased, sheweth, that your Petitioner is of  
*advanced age*, being in the *seventieth* year of his age. That in conse-  
 quence of his *age*, he is incapable of rendering that attention to his  
 trust which it demands. That he has given the notice required by  
 law, in such case. Wherefore, your Petitioner prays that he may be  
 allowed to resign his trust as *Administrator*, as aforesaid. This *March*  
*1, 1859*.

JAMES A. PRINGLE, *Pet'r's Att'y.*

Personally appeared before the undersigned, the above Petitioner  
*John Doe*, who being sworn, saith that the facts stated in the above  
 petition are just and true.

Sworn to and subscribed,  
 before me, this *March 1, 1859*. }  
*James Mack, J. P.*

JOHN DOE.

*Order by the Court.*

Whereas, *John Doe, Administrator* upon the Estate of *Richard Roe*,  
 deceased, applies for leave to resign his trust as *Administrator*, as  
 aforesaid, on account of *advanced age*. And whereas it appears that  
 the Petitioner has given the notice required by law. And it appear-  
 ing, that it will be to the interest of said Estate that said *Administrator*  
 should be allowed to resign. It is therefore ordered, that said *Admin-*  
*istrator and his securities* be discharged from all further liability, after  
 settling the business of said Estate with his successor, up to this time.  
 And it is further ordered, that the usual commissions be allowed the  
 said retiring *Administrator*, up to this date; and that after settlement  
 with his successor, Letters of Dismission do issue to said *Administrator*,  
 according to law.

*Bond of Successor.*

STATE OF GEORGIA, } We, *Charles Smith* as principal, and *John Doe* as  
*Houston County.* } security, both of the County and State aforesaid,  
 acknowledge ourselves held and bound unto *John S. Jobson*, Ordinary  
 of said County, in the sum of *five thousand* dollars; subject to the fol-  
 lowing condition—

The condition of the above obligation is as follows—whereas, *Samuel*  
*Felder*, late *Guardian* of *William Tims*, a Minor of said County, has

resigned his trust. And whereas, said *Charles Smith*, has been appointed *Guardian* of said Minor, as successor of said *Samuel Felder*, (who has adjusted, with the Ordinary, his accounts, touching his *Guardianship*.) Now, should the said *Charles Smith*, well and truly demean himself as *Guardian*, as aforesaid, agreeably to Letters of *Guardianship* bearing *even date* with this obligation, and agreeably to law, then this obligation to be void; otherwise, of force. This *May 1*, 1859.

Attest,—  
JAMES MACK, J. P.

CHARLES SMITH, *prin'l.* [ L. S.]  
JOHN DOE, *sec'ty.* [ L. S.]

AN ACT to relieve Executors and Administrators from the necessity of publishing notices of sales of Insolvent Papers in one of the public Gazettes of this State.—*Approved March 5*, 1856.

208. SEC. I. That it shall not be necessary for executors and administrators to advertise notices of sales of insolvent papers belonging to their respective estates, in one of the public gazettes of this State; but a notice of such intended sale at the court-house door of the county where such sale is required to be made, and at three other of the most public places in said county, shall be considered a full compliance with existing laws upon the subject; notwithstanding any law to the contrary.

Insolvent  
Papers need  
not be adver-  
tised in a  
Gazette.

AN ACT to make Executors and Administrators liable for costs in certain cases.—*Approved March 4*, 1856.

209. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, when any administrator or executor shall be required to make titles to land, under the act of the legislature approved February 15th, 1799, all costs and advertising fees which may be incurred by the petitioner, or applicant to the court of ordinary to have such titles made, shall be paid by the said administrator or executor, as the case may be.

Costs to be  
paid by Ex-  
ecutor and  
Adm'strator,  
in certain  
cases.

SEC. II. [Repeals conflicting laws.]

AN ACT to change the mode of Executors, Administrators and Guardians, in making their Returns to Ordinaries.—*Approved March 5*, 1856.

210. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, it shall be the duty of executors, administrators and guardians, in making their returns to ordinaries, to give a true copy of the amount of sales of cotton, with the number of bales and pounds; the amount of said sales, and to whom sold, and the time said sales were made.

Cotton must  
be included in  
returns.

211. SEC. II. That they shall be under the same restrictions in making their returns of corn, wheat, oats, and other produce, sold by them for the benefit of the heirs and wards for whom they may be acting.

All produce  
must be  
returned.

SEC. III. [Repeals conflicting laws.]

AN ACT to allow Executors, Administrators and Guardians, resident in other States or Territories, to control stocks and money in this State; and to empower Trustees to dispose of stock.—*Approved March 6*, 1856.

212. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, executors, administrators and guardians, holding their authority from courts of competent jurisdiction in any of the United States or territories, either under letters already granted, or hereafter to be granted, shall have full power to transfer any stock standing in the name of their decedents or wards, as the

Foreign Ex'r,  
etc., may  
transfer stock  
and receive  
dividends and  
deposits.



Copy of Letters to be filed. case may be, in any bank or other corporation, in this State. And to draw dividends on any such stock, heretofore or hereafter to be declared, and to check for deposits heretofore or hereafter to be made: *Provided*, that before doing any act herein-before authorized, such executors, administrators, or guardians, shall deposit with the bank or corporation, with which the business is to be transacted, a copy of his or her letters testamentary, of administration or guardianship, certified by the proper officer, under the seal of the court granting the same.

Trustee may transfer stock. 213. SEC. II. *And be it further enacted*, That from and after the passing of this act, all trustees for married women or other persons, shall have full power to transfer all stocks in banks or other corporations, standing in their names as trustees, without any order by any court, unless expressly restrained from doing so, by the instrument creating the trust.

AN ACT to allow Trustees to make returns to the Court of Ordinary, in certain cases; and to make it their duty to do so, in other cases. [And also, to allow William M. Reese, former Trustee of John G. Rives and family, to make returns to the Ordinary of Wilkes County.] And for other purposes.—*Approved Feb. 28, 1856.*

Trustees may make returns to Ordinaries. 214. SEC. I. *Be it enacted, &c.*, That from and after the passage of this act, any trustee may be allowed to make a return of his actings and doings as trustee, to the court of ordinary of county in which he may reside; and that the return when so made, shall have the same force and effect, as returns made in said court, by administrators, executors and guardians.

Ordinary's fee. 215. SEC. II. That the ordinary to whom such return or returns may be made, shall be entitled to the same fees as are now paid by executors, administrators and guardians.

Inventory must be made and recorded. 216. SEC. IV. That it shall be the duty of all trustees within three months after the trust property comes into their possession, to return to the court of ordinary of the county where they reside, an inventory of all the trust property in their hands, received by them; which shall be recorded under the same regulations as inventories of administrators and executors.

Executors, etc. may sell property. 217. SEC. V. That executors, administrators, guardians and trustees, shall be authorized to sell and convey property by attorneys-in-fact, in all cases where they may lawfully sell and convey in person.

AN ACT to make Deaf and Dumb persons Idiots in law, so far as to authorize the appointment of Guardians, in certain cases.—*Approved Dec. 22, 1840.*

Guardian may be appointed for Deaf and Dumb person. 218. SEC. I. *Be it enacted*, That from and after the passage of this act, deaf and dumb persons shall be so far considered idiots in law, as to authorize the inferior court to appoint guardians for such deaf and dumb persons, on the application of such deaf and dumb persons, or any person or persons for them: *Provided*, it shall be made satisfactorily to appear to said court, that such deaf and dumb person or persons are incapable of managing his or her estate, or his, or her, or themselves.

SEC. II. [Repealing section.]

AN ACT to authorize Guardians in this State, when his, her or their Wards, depart this life, leaving Assets of any kind, to close up said estate, without administering on the same.—*Approved Dec. 11, 1858.*

Guardian made Administrator, in certain cases. 219. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any ward or wards, shall depart this life, leaving assets of



any kind, the guardian or guardians of said ward or wards, are hereby vested with all the powers of administrators on estates, and shall be controlled by the laws in force in this State, in relation to administrators.

SEC. II. [Repeals conflicting laws.]

AN ACT to amend an act entitled "an act to alter and amend an act passed 22d Dec., 1840, entitled an act to alter and amend the ninth section of the Judiciary Act, of 1799, and the first section of an act relative to Executions, passed Dec. 14th, 1811." And to provide for the enforcement of Judgments against land sold and Bond for Titles given, assented to Dec. 29, 1847.—*Approved Feb. 11, 1850.*

215.\* SEC. I. *Be it enacted*, That when any judgment has been or shall be rendered, in any of the courts of this State, upon any note or other evidence of debt, given for the purchase of land, where titles have not been made, but bond for titles given, it shall and may be lawful for the executor or executors, administrator or administrators of the obligor in such bond, to make and file, and have recorded in the clerk's office of the superior court of the county, a good and sufficient deed of conveyance to the defendant, for said land, and thereupon the same may be levied on and sold under said judgment, as in other cases: *Provided*, that said judgment shall take lien upon the land, prior to any other judgment or incumbrance against the defendant.

Where Bond given for Titles Administrator, etc. may execute Conveyance and file it in Clerk's Office.

SEC. II. Any laws militating against this act, be and the same are hereby repealed.

AN ACT to amend the twelfth section of an act entitled "an act to revise and amend the Judiciary System of this State, approved February 16, 1799.—*Approved Dec. 18, 1843.*

216.\* SEC. I. *Be it enacted*, That from and immediately after the passage of his act, in all cases where an executor or administrator may be dismissed before final administration, it shall and may be lawful to commence suit against the succeeding executor or administrator, for any matter or cause of action against the testator or intestate of such executor or administrator, in the several courts of law and equity, in this State: *Provided*, twelve months shall have expired after the probate of the will of the testator, or the date of the first letters of administration.

Administrator de bonis non made party.

AN ACT to authorize certain actions at law.—*Approved Feb. 23, 1850.*

217.\* SEC. I. *Be it enacted*, That in all cases hereafter where death shall ensue from or under circumstances which would entitle the deceased, if death had not ensued, to an action against the perpetrator of the injury, the legal representative of such deceased, shall be entitled to have and maintain an action at law against the person committing the act from which the death has resulted. One half of the recovery to be paid to the wife and children, or the husband of the deceased, if any, in case of his or her estate being insolvent.

Action for tort in certain cases, by Adm'r. etc.

AN ACT to amend the twelfth section of the Judiciary Act of seventeen hundred and ninety-nine.—*Approved Dec. 27, 1845.*

*Whereas*, it sometimes happens that in cases where *Scire Facias* has been sued out against several parties, the same cannot be returned served upon all said parties, by reason of one or more of them having removed out of the County in which the suit was pending, or out of the State. *And whereas*, there are conflicting decisions in the Courts of this State as to the time within which *Scire Facias* should be sued out to make the legal representative or representatives of deceased Plaintiff, parties; for remedy whereof—



*Scire facias* served on one or more of several parties and *non est*, etc. as to others, sufficient.

218\*. SEC. I. *Be it enacted*, That in cases where there are several parties to be served with *scire facias*, and any one or more of them reside out of the State or county in which the suit is pending, a service upon those residing in the county where the suit is pending, and a return that the others are not to be found, shall be held and considered a sufficient service and return, to authorize the making of the representative or representatives of such deceased plaintiff or defendant, as the case may be, a party or parties, so as to authorize the original suit, in the name of the parties so made, to proceed to trial and judgment as though all such parties had been served with *scire facias*.

Judge to direct the time of issuing *Sci. Fa.*

219\*. SEC. II. In all cases where the representative or representatives of a deceased plaintiff are to be made parties by *scire facias*, the same shall issue within such time as the presiding judge shall deem to be reasonable, under the circumstances; and the presiding judge shall, in all cases, have power and authority to give such time for the issuing and service of *scire facias* to make parties, as in his opinion may be necessary to promote the ends of justice.

SEC. III. All laws and parts of laws militating against this act, be and the same are hereby repealed.

### DISTRIBUTION OF ESTATES.

AN ACT to amend an act entitled "an act to carry into effect the sixth section of the fourth article of the Constitution, touching the Distribution of Intestate's Estates; directing the manner of granting Letters of Administration," &c., passed December 23, 1789. *Approved Dec. 12, 1804.*

The manner of considering Intestate's Estates, and the manner of distributing the same.

220. SEC. I. When any person holding real or personal estate shall depart this life intestate, the said estate, real and personal, shall be considered as altogether of the same nature and upon the same footing, so that in case of there being a widow and child or children, they shall draw equal shares thereof (unless the widow shall prefer her dower, in which event she shall have nothing further out of the real estate than such dower, but shall nevertheless receive a child's part or share out of the personal estate.) And in case any of the children shall die before the intestate, their lineal descendants shall stand in their place and stead. In case of there being a widow and no child or children, or representative of children, then the widow shall draw a moiety of the estate, and the other moiety shall go to the next of kin in equal degree, and their representatives. If no widow, the whole shall go to the child or children. If neither widow, child or children, or legal representative of children, the whole shall be distributed among the next of kin in equal degree and their representatives; but no representation shall be admitted among collaterals further than the child or children of the intestate's brothers and sisters. If the father or mother be alive, and a child dies intestate and without issue, such father or mother (in case the father be dead, and not otherwise,) shall come in on the same footing as a brother or sister would do: *Provided*, that such mother, after having intermarried, shall not be entitled to any part or portion of the estate of a child who shall die intestate and without issue; but the estate of such child shall go to and be vested in the next of kin, on the side of the father. And in case a person dying without issue, leaving brothers or sisters of the whole and half blood, then the brothers and sisters of the whole and the half blood, in the paternal line only, shall inherit equally; but if there shall be no brother or sister, or issue of brother or sister of the whole or half blood, in the paternal line, then those of the half blood and their issue, in the maternal line, shall inherit. The next of kin shall be investigated

Who, and in what order they shall inherit.



by the following rules of consanguinity, viz.: children shall be nearest; parents, Next of kin. brothers and sisters, shall be equal in respect to distribution, and cousins shall be next to them.—[See 225.]

SEC. II. So much of the above-recited act as is repugnant to this act, shall be and the same is hereby repealed.

AN ACT to be entitled an act to amend and explain an act passed the 12th December, 1804, entitled "an act to amend an act entitled an act to carry into effect the sixth section of the fourth article of the Constitution, touching the Distribution of Intestates' Estates; directing the manner of granting Letters of Administration, Letters Testamentary, and Marriage Licenses, passed 23 December, 1789," as respects Advancements to children in the lifetime of the Intestate. *Approved Dec. 25, 1821.*

221. SEC. I. When any person holding real or personal estate shall depart this life intestate, the said estate real and personal, shall be considered altogether of the same nature, and upon the same footing as to distribution; which shall take place agreeably to the provisions of the before-recited act. But whenever there shall be a child or children of an intestate who shall have any estate by settlement of the intestate, or shall be advanced by the intestate in his or her lifetime, by portion or portions, equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made, he, she or they, in that case, shall receive no further distribution of the said intestates' estates. And whenever any child shall have an estate by settlement from the said intestate, or shall be advanced by the intestate in his or her lifetime, by portion not equal to the share which may be due to the other children by distribution as now established, then so much of the surplusage of the estate of such intestate as shall make the estate of all the children of such intestate to be equal, as near as can be estimated: *Provided*, such advancements, when brought into hotch-pot, shall be estimated according to the value of the property at the time such advancement was made, and no interest allowed thereon.—[See next act.]

Real and Personal Estate on the same footing as to distribution. Advancem't to child or children.

Partial Advancement to be brought into hotch-pot.

How property to be valued.

SEC. III. [Repeals all conflicting laws.]

AN ACT to alter and amend the act passed on the twenty-fifth day of December, 1821, in relation to the Distribution of Intestates, [*Estates*], so far as relates to advancements.—*Approved Feb. 20, 1854.*

220\*. SEC. I. *Be it enacted*, That when any person holding real or personal estate shall depart this life intestate, the said estate shall be considered altogether of the same nature and upon the same footing as to distribution, which shall take place according to law. But when any child or children shall have had an estate by settlement or advancement of the intestate, in his or her lifetime, by portion or portions, such estate, at its value, at the time of the advancement, without interest thereon, shall be brought into account, or hotch-pot, at the time of distribution, as so much of the share of any such child of the intestate: *Provided*, that if such advancement, at its value when made, be more than the distributive share of any such child, he or she shall not be liable to pay any thing on account thereof.

Real and personal Estate, the same in Distribution. Advancement how brought in and accounted for.

221\*. SEC. II. That the widow of any intestate, in the division of his said estate, shall be entitled to the benefit of any advancements being brought into hotch-pot; and that when a child, directly or as *cestui que trust*, after having received an advancement, shall die in the life-time of the intestate, the descendants of such child, taking as heirs of the intestate, in the dis-

Widow to share in benefit of any Advancement brought in.



tribution, shall receive only the share or portion such child would be entitled to under this act, if in life.

AN ACT declaring and making certain the law regulating the rights of Husbands in and to the property of their deceased Wives, and for other purposes.—*Approved Dec. 26, 1827.*

*Whereas*, the legislature of this State did, on the 25th of December, 1821, pass an act, entitled “an act to amend and explain an act passed the 12th December, 1804, entitled an act to amend an act entitled an act to carry into effect the sixth section of the fourth article of the constitution, touching the distribution of intestates’ estates; directing the manner of granting letters of administration, letters testamentary and marriage licenses, passed 23d December, 1789, as respects advancements to children, in the lifetime of the intestate.” By the second section of which act, it is provided, “that in case of a *feme-covert* dying intestate, the husband may demand and have administration of their rights and credits, and other real and personal estates; and recover and enjoy the same without being subject to distribution. *And whereas*, the constitutionality of said second section is doubted, by reason of its departure from the title of said bill; for remedy whereof—

Husband has the right to administer on Estate of deceased Wife.

222. *Be it enacted*, That in every case where a *feme-covert* has died within this State intestate, since the said 25th of December, 1821, or may hereafter die intestate, the husband shall and may demand and have administration of their rights and credits, and of other real and personal estates; and recover and enjoy the same, without being subject to distribution. Any law, usage or custom to the contrary notwithstanding.

AN ACT to amend an act of the 23d December, 1826, to amend an act to enable *Feme-Coverts* to convey their Estates, and for confirming and making valid all Conveyances and Acknowledgments heretofore made by *Feme-Coverts*, passed the 24th of April, 1760, so far as the same relates to *Feme-Coverts* conveying their Dower. And also, to enable the wife to inherit the whole Estate of her deceased Husband.—*Approved Dec. 21, 1829.*

*Whereas*, it is provided in the second section of the act of the 23d December, 1826, “That whenever it shall so happen that any person shall die intestate and without issue, his wife shall inherit the whole estate, both real and personal, of her deceased husband, after paying his just debts.” *And whereas*, doubts are entertained of the constitutional validity of said enactment, on account of a want of conformity between the title and the body of the act—

Widow takes all of deceased Husband's estates.

223. *Be it therefore enacted*, That the said recited second section of the act of 1826, shall be, and it is hereby declared to be in full force and effect, after the passage of this act, so far as the same may affect any case or cases that may hereafter arise.

AN ACT to repeal part of the first section of an act passed on the twelfth day of December, eighteen hundred and four, touching the Distribution of Intestates’ estates, &c.—*Approved Dec. 11, 1841.*

Mother may inherit from last child.

224. SEC. I. *Be it enacted*, That from and after the passage of this act, that the second provision contained in said section, which is in these words: “That on the death of the last child intestate and without issue, the mother shall take no part of his or her estate, but the same shall go to and be divided in like manner, in the next of kin on the father’s side,” shall be and the same is hereby repealed.



AN ACT to repeal a part of the first section of the act passed on the twelfth day of December, eighteen hundred and four, entitled “an act to amend an act entitled an act to carry into effect the sixth section of the fourth article of the Constitution, touching the Distribution of Intestate’s Estates; directing the manner of granting Letters of Administration, Letters Testamentary and Marriage Licenses;” and to insert another proviso in lieu of that repealed.—*Approved Dec. 22, 1843.*

225. *Be it enacted*, That the proviso contained in the first section of the above-recited [act,] in the following words: “*Provided*, that such mother, after having intermarried, shall not be entitled to any part or portion of the estate of a child who shall die intestate and without issue; but the estate of such child shall go to and be vested in the next of kin on the side of the father,” be and the same is hereby repealed. And that the following be inserted in lieu thereof, to wit: *Provided* that such mother, after having intermarried, shall not be entitled to any part or portion of the estate of such child, who shall die intestate and without issue, unless it shall be the last or only child.

After inter-marriage may inherit from last child.

AN ACT to change and point out the mode of Inheritance in certain cases therein mentioned.—*Approved Dec. 26, 1845.*

226. SEC. I. *Be it enacted*, That from and after the passage of this act, whenever any *feme-covert*, having a child or children living, by a former husband, shall be entitled to property by inheritance, such property shall not belong to the husband of such *feme-covert*, as heretofore, but shall be equally divided between all the children of such *feme-covert*, and said *feme-covert*.

How *Feme-Covert* and her former Children shall inherit.

227. SEC. II. Such property, so divided as aforesaid, the parts or shares so allotted to any child or children by a previous marriage, shall be vested in such child or children; and the part or parts, so allotted to such *feme-covert*, and to her children by her last husband, shall vest in such husband in the same manner as said property would vest under existing laws.

Husband’s rights to Wife’s share.

AN ACT to explain the tenth section of the act passed on the 18th day of December, 1792, entitled “an act to protect the Estates of Orphans, and to make permanent provision for the poor.—*Approved Dec. 27, 1845.*

228. *Be it enacted*, That in the payment of the debts of any deceased person or persons, no debts secured by mortgage shall be entitled to any priority over any other debt of equal degree, except so far as relates to the property mortgaged.

Mortgage extends only to Mortgaged property.

AN ACT to explain and amend an act entitled “an act to regulate Escheats in this State, and to appoint Escheators, passed the 5th December, 1801.”—*Approved Dec. 13, 1816.*

*Whereas*, the term heirs in said act contained, has been so construed as to prevent children born of the body of the same mother, from being capable of inheriting or transmitting inheritance—

229. *Be it enacted, &c.*, That where any woman shall die intestate, leaving children commonly called illegitimate or natural, born out of wedlock, and no children born in lawful wedlock, all such estate whereof she shall die seized or possessed, whether real or personal, shall descend to and be equally divided among such illegitimate or natural-born children and their representatives, in the same manner as if they had been born in wedlock. And if any such illegitimate or natural-born child shall die intestate, without leaving any child or children, his or her estate, as well real as personal, shall descend to and be equally divided among his or her brothers and sisters, born of the body of the same mother and their representatives, in the same manner and under

Illegitimate children to inherit from their mother, and from each other.



the same regulations and restrictions as if they had been born in lawful wedlock.

SEC. II. [Repeals all conflicting laws.]

AN ACT to alter and amend "an act to explain an act to regulate Escheats in this State, and to appoint Escheators, passed the 13th day of December, in the year 1816," so far as to allow Bastards or Natural-Born children of Widows to inherit from their mother, under certain circumstances therein specified.—*Approved Feb. 11, 1850.*

Illegitimate children of Widows may inherit in certain cases.

230. SEC. I. *Be it enacted*, That from and immediately after the passage of this act, all bastards or natural-born children of widows, when said widows shall die intestate, shall inherit the real and personal estate of their deceased mothers, acquired and accumulated during widowhood, equally with the child or children of said widows, born in lawful wedlock. Any law, usage or custom to the contrary notwithstanding.—[*And see next Act.*]

AN ACT to prescribe the order of Descent and Succession of the Estates of Illegitimate persons who die intestate.—*Approved March 4, 1856.*

Distribution of Illegitimates' Estates.

231. SEC. I. When any person shall depart this life intestate, who by law is illegitimate, having [*leaving*] a widow, or widow and child, or children, or their descendants, then the property of such illegitimate person shall descend to, and belong to such persons as would inherit the same were such person legitimate.

How to descend in case of no Widow, Child or Children.

232. SEC. II. If such illegitimate person shall leave no widow, or child, or children, or the descendants of a child, or children, then the property of such illegitimate person shall descend to, and belong to such persons of the maternal blood, as would be entitled to the same, had such illegitimate person been legitimate, and died leaving no collateral kindred of the paternal blood.

Non-resident heir at law, may be Executor or Administrator.

233. SEC. III. That whenever a citizen of any other State, or of any Territory of the United States, shall be heir at law, of equal, greater or sole interest, in any estate of a deceased citizen of the State of Georgia, it shall be lawful for such citizen, first mentioned, to be nominated, and to act as the executor or co-executor of wills of testators of such estate aforesaid; or as administrator of such estate, upon complying with the terms now required by law, of resident citizens.

SEC. IV. [Repeals conflicting laws.]

AN ACT to alter and amend an act, for the more effectually securing the Probate of Wills, limiting the time for Executors to qualify, and Widows to make their Election, and for other purposes therein mentioned.—*Approved Dec. 10, 1812.*

How Distribution of Estates to be made.

221. SEC. I. The courts of ordinary, upon application made by any administrator, administratrix, guardian or distributees of any estates, shall appoint three or more freeholders of the county in which such application shall be made, whose duty it shall be to divide the said estate subject to distribution, into as many parts or shares as there are distributees, and assign, by lot or otherwise, as to them shall seem proper, one of the said parts or shares to each distributee, or his, her or their guardian or legal representative, the said distributee, or his, her or their guardian or legal representative, first giving bond and approved security to the said administrator, to refund his or her proportionable part of any debt which may be afterwards established against the said estate, and the costs attending the recovery of such debt: *Provided always*, the party so applying shall give to all the parties in interest, within the State, written notice thereof twenty days, and those without the State, ninety days [*four months' notice*]

Refunding bond.

Notice must be given.



by publication,—see 222†, and 223†,] before the meeting of the court at which the said application is made, [four months, see 223†.] And provided also, that the persons so making distribution shall be previously sworn to make the same according to justice and equity, without favor or affection to any of the parties, to the best of their skill and understanding.

222\*. SEC. II. Any executor, executrix, administrators, administratrix or guardian, whose residence shall be changed from one county to another, either by the creation of a new county, removal or otherwise, shall have the privilege of making the annual returns required of them by this act, to the court of ordinary of the county in which they reside, by having previously obtained a copy of all the records concerning the estates for which they are bound as executors, executrix, administrators, administratrix or guardians. And having had the same recorded in the proper office in the county in which they then reside. And having given new bond and security as the law directs, for the performance of their duty.

Executors, etc.  
removing  
from one  
County to  
another.

AN ACT to explain an act passed on the tenth day of December, 1812, entitled “an act to alter and amend an act for the more effectually securing the Probate of Wills, limiting the time for Executors to qualify and Widows to make their Election, and for other purposes therein mentioned.”—*Approved Dec. 28, 1843.*

223\*. *Be it enacted*, That nothing in the second section of said act shall be so construed, as to compel executors, (who are not compelled by the existing laws of this State to give security,) to give such security upon removing their proceedings from one county to another, under the provisions of this act.

Executor not  
required to  
give security  
in all cases.

AN ACT to alter and amend “an act for the more effectually securing the Probate of Wills; limiting the time for Executors to qualify, and Widows to make their Election; and for other purposes therein mentioned,” passed December 10, 1812.—*Approved Dec. 25, 1837.*

222†. SEC. I. That part of the above-recited act, requiring administrators, administratrix, guardians, or distributees of any estate, to give personal notice in writing, to be served twenty days on the parties in interest, if in the State, and ninety days, if out of the State, be and the same is hereby repealed, so far as respects notices to parties out of the State.

Written  
Noti to Par -  
ties out of the  
State, not re-  
quired.

223†. SEC. II. Before any administrator, administratrix or distributee of any estate, shall get an order for the distribution of any estate from any of the courts of ordinary in this State, he shall give to all the parties twenty days' notice, if in this State; and if residing out of the State, four months' notice, by advertising, at least, twice a month, in one of the newspapers of this State. Any law to the contrary notwithstanding.

AN ACT explanatory of the second section of an act entitled “an act to alter and amend an act for the more effectually securing the Probate of Wills,” &c., approved December 10, 1812.—*Approved March 5, 1856.*

224\*. SEC. I. *Be it enacted, &c.*, That it is the true intent, spirit and meaning of the second section of said recited act, that whenever any executor, administrator or guardian, shall have had his said trust changed or removed from one county to another, in the matter of making his returns as such executor, administrator or guardian, as contemplated by the second section of the before-recited act, that by so doing the whole of said trust is thereby removed from the one county to the other, so that all and every question growing out of or affecting said trust, whether by *caveat* to the probate of the will, or granting letters dismissory, or any other mat-

All questions  
touching the  
trusts of Ex-  
ecutors, etc.  
arising after  
the removal  
of proceed-  
ings, to be  
tried in the  
Co. to which  
removed.



ter or thing pertaining to said trust, shall be heard and tried, only in that county to which said trust has been removed.

*Notice to Distributees.*

STATE OF GEORGIA, } To A. B., one of the Distributees of the Estate  
Houston County. } of *John Doe*, deceased, late of said County.

You are hereby notified that I shall apply, in terms of the law, to the Court of Ordinary of said County, for a division of the Estate of said deceased, among the Distributees. This *January 1, 1859.*

SAMUEL DOE, *one of the Distributees.*

NOTE.—The party applying for a Distribution, must “give to all the parties in interest, within the State, written notice of such application, which must be served personally, twenty days;” and those without the State, four months’ notice, by publication at least twice a month, in some news-paper, previous to the Term of the Court at which the application is proposed to be made.

*Distributee’s Petition.*

STATE OF GEORGIA, } To *John S. Jobson*, Esq., Ordinary of said Coun-  
Houston County. } ty.

The Petition of *Samuel Doe*, one of the Distributees of *John Doe*, deceased, respectfully sheweth, that there are *four* Distributees of the Estate of said deceased, to wit, *Mrs. Nancy Doe*, Widow of said deceased, *James Doe*, *William Doe* and your Petitioner, sons of said deceased. And your Petitioner further shows, that the Estate of said deceased is now in a condition to be distributed among the heirs; that notice of this application has been given, according to the statute in such case made and provided: wherefore, your Petitioner prays the appointment of freeholders, to distribute said Estate among the Distributees entitled thereto, according to law. This *May 1, 1859.*

SIMON WAKE, *Pet’r’s Att’y.*

*Order under the above Petition.*

COURT OF ORDINARY, *May Term, 1859.*

STATE OF GEORGIA, }  
Houston County. } By *John S. Jobson*, Ordinary of said County.

Whereas, *Samuel Doe*, one of the Distributees of *John Doe*, deceased, having made application for the appointment of freeholders for the purposing of distributing the Estate of said deceased among the Distributees entitled thereto. And notice having been given as required by law. And it appearing that there are *four* Distributees interested in said Estate, to wit, *Nancy Doe*, Widow of the deceased, *James*, *William* and *Samuel Doe*, sons of the deceased; it is ordered, that *William Jones*, *Richard Winn* and *Peter Ward*, freeholders of said County, be and they are hereby appointed, authorized and required, to make distribution of the Estate of said deceased among the Distributees aforesaid, according to law. And it is further ordered, that said freeholders make a return of their actings and doings in the premises, at the next regular term of this Court.

*A true extract from the Minutes, this May 1, 1859.*

JOHN S. JOBSON, *Ordinary.* [L. S.]

*Oath of Freeholders on the back of the Order.*

You do solemnly swear that you will well and truly make distribution of the Estate named in the within Order, amongst the Distributees therein named, according to justice and equity, without favor or affection to any of the parties, to the best of your skill and understanding: so help you God.

*Sworn to before the undersigned, this May 1, 1859.*

JAMES MACK, J. P.

*Return of Freeholders.*

STATE OF GEORGIA, } By virtue of an Order from the honorable Court  
Houston County. } of Ordinary of said County, to us directed, authorizing and requiring us to make Distribution of the Estate of *John Doe*, deceased, late of said County, among the Distributees entitled to said Estate, we proceeded, *this day*, to the performance of that duty. There were *four* distributees, to wit, *Nancy Doe*, Widow of the deceased; *Samuel Doe*, son of the deceased, of full age; *William* and *James Doe*, minor children of said deceased, whose interests were represented by *Samuel Rogers*, Guardian of said minor children. The property was divided into *four* shares and numbered 1, 2, 3, 4, which were assigned to the Distributees in the following manner, to wit, the names of the Distributees were written on separate pieces of paper and placed in a hat. The numbers were written on separate pieces of paper and placed in another hat; the hats were both well shaken after the names and numbers were placed in them; a name was then drawn from the hat containing the names, and a number was drawn from the hat containing the numbers, and in this manner continued, till all were drawn. The following was the result—

No. 1. Samuel Rogers, Guardian of William Doe.

No. 2. Mrs. Nancy Doe.

No. 3. Samuel Doe.

No. 4. Samuel Rogers, Guardian of James Doe.

No. 1. Consisted of a Negro woman named *Betty* and her son *Primus*, valued at - - - - - \$650 00

No. 2. Consisted of two Negro boys, *Jim* and *Sam*,  
valued at - - - - - 700 00

No. 3. Consisted of two Negro girls, *Mary* and *Sally*,  
valued at - - - - - 700 00

No. 4. Consisted of Negro man *Tom*, valued at - - - - - 650 00

No. 2. Pays to No. 1 - - - - - 25 00

No. 3. Pays to No. 4 - - - - - 25 00

*Which is respectfully submitted, August 1, 1859.*

WILLIAM JONES, }  
RICHARD WINN, } *Freeholders.*  
PETER WARD, }

NOTE.—There may arise a variety of cases which the above form may not precisely suit; the general outline of proceeding, however, in each case, is preserved in the form.



*Refunding Bond.*

STATE OF GEORGIA, } We, *Samuel Doe* as principal, and *John Sanders*  
*Houston County.* } as security, acknowledge ourselves held and bound  
 to *Richard Roe, Administrator of John Doe*, deceased, late of said County, the sum of *one thousand dollars*; subject to the following conditions—

Whereas, said *Richard Roe, Administrator* as aforesaid, has divided among the *Distributees*, the *entire* Estate of said deceased; and whereas the above bound *Samuel Doe* has received his *Distributive* share of said Estate, the same being *one-fourth*. Now, should the said *Samuel Doe* well and truly pay his proportionable part of any debt which may hereafter be established against the said Estate, and the costs attending the recovery of such debt, then the foregoing obligation to be void; otherwise, of force. This *August 1, 1859*.

Approved—  
*James Mack, J. P.*

SAMUEL DOE, *prin'l.* [L. S.]  
 JOHN SANDERS, *sec'ty.* [L. S.]

## WILL, CODICIL AND CAVEAT.

AN ACT to authorize the Probate of Wills in certain cases, in the County where the Testator died or may die.—*Approved Dec. 29, 1838.*

Party dying out of County of his residence, how probate of Will to be made. 225.\* SEC. I. When any person shall depart, or has departed, this life testate, and when without the limits of the county of the citizenship of said testator, it shall and may be lawful for the will of the said testator, to be admitted to probate in the county of the residence of the witnesses to the will of any testator as aforesaid: *Provided*, said witnesses shall reside, at the time of the probate of the will, in the county where said testator died or may die.

Evidence of the fact. 226.\* SEC. II. The certificate under the hand and official seal of the clerk of the court where such probate may be made, shall be sufficient authority and evidence of probate, to authorize the granting of letters testamentary, or administration with the will annexed, and in the proper county, and under legal restrictions, by proper authority.

Original Will must be transmitted. 227.\* SEC. III. The clerk of the court where such will may be proven as aforesaid, shall transmit the original will, together with the certificate aforesaid, to the clerk of the court of the county where letters testamentary, or administration, are or may be granted. And it shall be the duty of the clerk of the court last aforesaid, to record said will, as is now provided by law. And when a *caveat* shall be filed to said will, the same shall be tried in the county where such letters testamentary, or administration, are or may be granted.

Caveat, where tried.

SEC. IV. All laws and parts of laws militating against this act, be and the same are hereby repealed.

*Caveat.*

And now at this term, the Will of *John Doe* (and *Codicil*, if one,) being brought before the Court for *Probate*, (or if proven in vacation, for *admission to record*,) *William Smith*, an heir at law of said *John Doe*, comes and enters his *Caveat* against the *proof* thereof, upon the following grounds, to wit—

*First*—For that said *John Doe*, at the time of making said pretended Will (and *Codicil*) was not of sound and disposing mind and memory.

*Secondly*—For that also, the said *John Doe* did not execute said pre-

tended Will (*and Codicil*) freely and voluntarily, but by undue influence and persuasion.

*Thirdly*—For that also, the said *John Doe* was imposed upon by the false representations of *James A. Doe*, principal legatee named in said pretended Will, (*or Codicil*) of and concerning the character and conduct of this Caveator, and was thereby induced and unduly influenced to disinherit Caveator, by said pretended Will (*or Codicil*.)

*Fourthly*—For that also, the said *John Doe* executed the said pretended Will (*and Codicil*) from the over-importunities of the legatees named in said pretended Will, (*and Codicil*) and to obtain quiet and repose.

*Fifthly*—For that also, the mind and memory of the said *John Doe*, at the time of executing said pretended Will, (*or Codicil*) was exceedingly imbecile and weak, and divers fraudulent practices were employed, by interested persons, to induce him to make the unreasonable and unjust disposition of his Estate, as contained in said pretended Will (*or Codicil*.)

And all this the Caveator is ready to verify; wherefore, he prays the judgment of the Court, &c.

JAMES A. PRINGLE, *Att'y pro Cav'r*.

#### *Issue.*

*Caroline Doe* and *Richard Roe*, Executrix and Executor of the Will of said *John Doe*, come into Court by their attorney, *Thomas Felder*, and traverse the grounds of the Caveat of *William Smith*, the Caveator; and say, that the said *John Doe* was of sound mind and memory at the time of the execution of the said Will (*and Codicil*.) That he then possessed mind sufficient for the transaction of the ordinary business of life. That he executed the said Will (*and Codicil*) freely, voluntarily, and without any compulsion or undue influence whatever. And that no fraudulent practices or over-importunities were used by any person or persons, to induce said *John Doe* to execute said Will (*or Codicil*.) Wherefore, they say, that the Will (*or Codicil*) is good and valid in law, and ought to be admitted to be proved and recorded. And of this they pray the judgment of the Court, &c.

THOMAS FELDER, *Att'y pro Ex'r's and Ex'r*.

#### *Judgment.*

Whereupon, it is considered by the Court, that the said Will (*and Codicil, or Codicil*) of *John Doe*, deceased, be and the same is hereby permitted and ordered to be proved and recorded, as the true last Will and Testament of said *John Doe*, deceased. And it is further ordered, that Letters Testamentary issue to said *Caroline Doe* and *Richard Roe*, as Executrix and Executor, in terms of the law, in such case made and provided. And that they recover of and from said Caveator, the sum of twenty dollars, for their costs, in this behalf laid out and expended. And the Caveator in mercy, &c. Judgment signed this May 1, 1859.

THOMAS FELDER, *Att'y pro Ex'r's and Ex'r*.



AN ACT to require the Justices of the Inferior Courts of this State, when sitting for Ordinary purposes, to declare an Intestacy in certain cases.—*Approved Dec. 19, 1834.*

After-marriage, or after-born child, revokes a Will previously made.  
Intestacy declared.

234. In all cases when a person, after having made a will, shall marry, or have born a child or children, and no provision shall be made in said will, for the wife after-married, or child or children after-born; and shall depart this life without revoking said will, or altering it subsequent to said after-marriage, or subsequent to the birth of said after-born child or children, the justices of the inferior court of the county, while sitting as a court of ordinary, having jurisdiction of the case, shall pass an order declaring that such person died intestate. And his estate shall be distributed under the laws of this State regulating the distribution of intestates' estates: *Provided nevertheless*, that either party being dissatisfied with the decision of the said court, may enter an appeal to the superior court, as in other cases.

### Order.

Whereas, on the *first* day of *May*, in the year of our Lord eighteen hundred and *fifty-six*, *John Doe*, of *this* County, made and executed his Will, in due and proper form; thereby disposing of the whole of his Estate, consisting of real and personal property. And whereas, said *John Doe*, on the *first* day of *July*, in the year of our Lord eighteen hundred and *fifty-seven*, entered into marriage with *Sarah Jones*, in due form of law, (*or had a child or children born*, as the case may be;) and neither by said Will, or any Codicil thereto, made any provision whatever for his said wife, (*or after-born child or children*.) And whereas, said *John Doe*, on the *tenth* day of *June*, in the year of our Lord eighteen hundred and *fifty-eight*, departed this life: therefore, it is hereby ordered, considered and adjudged, that said Will be cancelled, revoked and set aside; and it is further ordered and declared, that said *John Doe* died Intestate and without Will, and that his Estate be distributed under the laws of this State, regulating the distribution of Intestates' Estates.

NOTE.—The Court must inquire into the Execution of the Will; into the legality of the Marriage, or Birth of a Child or Children, and as to the time of said Marriage or Birth.

AN ACT to alter the law in relation to Lapsed-Legacies.—*Approved Dec. 23, 1836.*

Legacies, in certain cases, not to lapse.

235. From and after the passage of this act, where any person named as legatee in the will of any other person, shall die before the testator, leaving issue that shall be alive at the death of such testator, the legacy, (provided the same be absolute and without remainder or limitation,) shall not lapse as heretofore, but shall vest in such issue.

AN ACT to require all Wills of personal property to be executed and proved in the same manner as is now prescribed by law for the execution and proof of devises of Real Estate.—*Approved Jan. 21, 1852.*

Wills of personal property, how to be executed.

238. SEC. I. *Be it enacted*, That from and after the first day of June next, all wills and testaments of personal property shall be in writing and signed by the party so willing and bequeathing the same, or by some other person in his presence and by his express direction. And shall be attested and subscribed in the presence of the said testator, by three or four credible witnesses, or else they shall be utterly void and of non effect.

239. SEC. II. That all laws and parts of laws, now of force in this State, and applicable to the revocation of devises of real estate, shall extend to wills, and testaments of personal property. How revoked.

240. SEC. III. That all laws and parts of laws, now of force in this State prescribing the mode of proof of devises of real estate are hereby extended to wills and testaments of personal property. Probate the same.

241. SEC. IV. That this act shall not be construed to extend to nuncupative wills. Nuncupative Wills excepted.

242. SEC. V. That as soon as this act shall be passed, it shall be the duty of the governor to cause the same to be published, in three or more of the public gazettes of this State, at least once in every week, until the first day of June next. And that all laws and parts of laws militating against the provisions of this act, be and the same are hereby repealed. This act to be published.

### *Written Will.*

STATE OF GEORGIA, } In the name of God—Amen. I, *John Doe*,  
Houston County. } of said State and County, being of *advanced age*, but of sound and disposing mind and memory; knowing that I must shortly depart this life, deem it right and proper, both as respects my family and myself, that I should make a disposition of the property with which a kind Providence has blessed me. I do therefore, make this my last Will and Testament, hereby revoking and annulling all others, by me heretofore made.

*First.*—I desire and direct that my body be buried in a decent and Christian-like manner, suitable to my circumstances and condition in life. My soul, I trust, shall return to rest with God who gave it, as I hope for salvation through the merits and atonement of the blessed Lord and Saviour Jesus Christ.

*Secondly.*—I desire and direct that all my just debts be paid *without delay*, by my Executors herein-after named and appointed.

*Thirdly.*—I give, bequeath and devise to my beloved wife *Caroline*, *lot of land number forty-nine*, in the *tenth* district of *Houston County*, containing *two hundred two and a half acres*; with all the rights, members and appurtenances to said *lot of land* in anywise belonging, free from all charge and limitation whatever. To her own proper use, benefit and behoof forever; with full power to dispose of the same, by Will or otherwise, as she may deem proper. I also, give and bequeath to my beloved wife, in the same unreserved manner, the farming utensils used on and belonging to the farm on said *lot of land*. And *two mules*; *five Cows and Calves*; *three Sows and their Pigs*; *twenty head of pork hogs*, such as she may choose from all my stock of each kind. And all my household and kitchen furniture, and my Carriage and Horses, all without limitation or reserve.

*Fourthly.*—I give and bequeath to my beloved wife, for and during her natural life only, my negro man *Joe*, known as my *carriage-driver*; my negro man *Tom*, about *thirty* years of age; *Tom's* wife *Sally*, about *twenty* years of age, and their *two* children, to wit: *Venus*, about *four* years of age, and *Prince*, about *two* years of age, and my negro woman *Harriet*, known as my *cook*. [If it be intended that the property, or any part of it, given to the wife, should be in lieu of Dower, it must be so distinctly expressed—thus, “the property devised and bequeath-



ed, in the above articles to my wife, is in full extinguishment of her whole right of Dower in my real Estate.”]

*Fifthly*.—I give, bequeath and devise to my son *William A.*, lot of land number *fifty*, and lot of land number *sixty*, both in the *twentieth* district of *Houston County*, each containing *two hundred two and a half* acres, with all the rights, members and appurtenances to each of said lots of land, in any wise belonging, forever in fee-simple.

*Sixthly*.—I give and bequeath to my son *William A.*, my negro man *Jim*, about *thirty-five* years of age; and *Jim's* wife *Rachel*, about *thirty* years of age, and their *two* children, to wit: *Lucy*, about *six* years of age, and *Hester*, about *four* years of age. To him, the said *William A.* forever.

*Seventhly*.—I give and bequeath to my daughter *Harriet Snow*, wife of *Reuben Snow*, for her sole and separate use, for and during her natural life, free and exempt from the debts and liabilities of her present, or a future husband, the following property, to wit: my negro man *Will*, about *forty* years of age; *Will's* wife *Mary*, about *thirty* years of age, and their *two* children, to wit: *Ben*, about *ten* years of age, and *Sam*, about *six* years of age. The property in this article contained, (at the death of my daughter *Harriet Snow*,) shall pass to and become the property of the children, and representatives of children, of said *Harriet*, forever.

*Eighthly*.—The residue of my property, both real and personal, wherever and whatever it may be, including that given to my wife *Caroline*, in the fourth article of this Will, for and during her natural life, (after her estate therein is over,) I give, bequeath and devise to my minor son *James T.* in fee-simple and forever. And I hereby appoint my trustworthy friend *William Roberts*, Guardian of the person and property of my said minor son *James T.*

*Ninthly*.—I hereby constitute and appoint my friend *Richard Roe*, Executor of this my last Will and Testament. This *May 1, 1859.*

JOHN DOE. [L. S.]

Signed, sealed, declared and published by *John Doe*, as his last Will and Testament, in the presence of us the undersigned, who subscribed our names hereto in the presence of said Testator, at his special instance and request, and in the presence of each other. This *May 1, 1859.*

THOMAS ROUSE.

SAMUEL WEST.

JOHN CROSS.

JASON BULL.

### Codicil.

STATE OF GEORGIA, } Whereas, I, *John Doe*, did on the *first* day of  
*Houston County.* } *May*, in the year of our Lord eighteen hundred  
and *fifty-nine*, sign, seal, declare and publish my last Will and Testament, in the presence of *Thomas Rouse, Samuel West, John Cross and Jason Bull*, who signed the said Will and Testament as witnesses. And whereas, I am desirous of altering and changing a bequest and devise in the *fifth* article of said Will, (and to supply an omission

therein,) I therefore, make and publish this Codicil to said Will and Testament.

*First.*—I revoke and annul the said *fifth* article of said Will, so far as relates to *lot of land number sixty*, in the *twentieth* district of *Houston* County.

*Secondly.*—I give, bequeath and devise said *lot of land number sixty*, in the *twentieth* district of *Houston* County, to my minor son *James T.*, in *fee-simple*.

*Thirdly.*—I hereby appoint my trusty friend *Samuel Williams*, Trustee of the property given in the *seventh* article of my Will, of the *first* of *May*, eighteen hundred and *fifty-nine*, to my daughter *Harriet Snow* and her children. This *July 1, 1859*.

JOHN DOE. [L. S.]

Signed, sealed, declared and published by *John Doe*, as a Codicil to his Will and Testament of the *first* day of *May*, eighteen hundred and *fifty-nine*, in the presence of the undersigned, who subscribed our names hereto in the presence of said Testator, and at his special instance and request, *and in the presence of each other*. This *July 1, 1859*.

ROGER THOMAS.

WILLIAM WEST.

JOHN A. ROSS.

PETER POUNCE.

NOTE.—A Will of personal property must be executed in the same way as one conveying Real Estate. A Codicil must be executed in the same way that the Will was executed. The witnesses to either instrument, will be required to swear to all that is contained in their attestation, except as respects the signing *in the presence of each other*; this is immaterial. It is not necessary that the witnesses to the Codicil should be the same persons that signed the Will.

#### NUNCUPATIVE WILL.

243. SEC. XIX. And for prevention of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury—*Be it enacted, &c.*, That no nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses, at the least, that were present at the making thereof. Nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect. Nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident for the space of ten days or more, next before the making of such will, except where such person was surprised or taken sick, being from his own home, and dated before he returned to the place of his or her dwelling.—*Statute of Frauds*.

Nuncupative Wills. their requisites.

#### Form of the Will.

STATE OF GEORGIA, } We, *Samuel T. Williams, Thomas W. Carter,*  
Houston County. } *Charles Ransom* and *William T. Robb*, were  
present *last evening*, the *first* day of *May*, in the year of our Lord  
eighteen hundred and *fifty-nine*, at the residence of *John Doe*, *unmarried*  
*man*, before and at the time of his death. About *two hours* before his



death, in perfect possession of his mental faculties, as appeared to us, said *John Doe* called upon the by-standers, and upon the undersigned in particular, to remember and take notice of what he was about to say; when he said, "That it had been his intention for some time past, to make his Will in writing, thereby to dispose of his property, but had neglected to carry his intention into execution, and that now it was not practicable. That he wished us to understand that his Will and desire was, that *Mrs. Rachel Ross*, his sister, widow of *William Ross*, deceased, should have, take and possess, all his personal estate, of every kind and description, to her own proper use, benefit and behoof. That she was nearly destitute, and had several small children to provide for; and that she had been very kind and attentive to him during his illness. And he desired and requested that his friend *Richard Roe*, would see that his wishes and desires, in this regard, were carried fully out." Immediately after which he died. This May 2, 1859.

SAMUEL T. WILLIAMS.  
THOMAS W. CARTER.  
CHARLES RANSOM.  
WILLIAM T. ROBB.

Will must be  
reduced to  
writing, etc.

244. SEC. XX. After six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.—*Statute of Frauds*.

#### *Affidavit of Witnesses—(on the back of the Will.)*

In person appeared before me *James Mack*, a Justice of the Peace in and for said County, *Samuel T. Williams*, *Thomas W. Carter*, *Charles Ransom* and *William T. Robb*, who being duly sworn say, that this writing contains the last requests and verbal dispositions of the personal property of *John Doe*, deceased, late of said County, and is just and true in all its parts.

Sworn to and subscribed,  
before me, this May 2, 1859.  
*James Mack, J. P.*

}

SAMUEL T. WILLIAMS.  
THOMAS W. CARTER.  
CHARLES RANSOM.  
WILLIAM T. ROBB.

When Letters  
Testamentary  
may pass.  
Notice must  
be given.

245. SEC. XXI. No letters testamentary, or probate of any nuncupative will, shall pass the seal of any court till fourteen days, at least, after the decease of the testator, be fully expired. Nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow, or next of kin to the deceased, to the end they may contest the same, if they please.—*Statute of Frauds*.

#### *Notice by the Court.*

STATE OF GEORGIA, }  
*Houston County.*

COURT OF ORDINARY, }  
*June Term, 1859.*

*To Mrs. Sarah Doe, Widow of John Doe, deceased.*

Whereas, *Richard Roe* hath, this day, filed in my Office, a writing,

purporting to be the Nuncupative Will of *John Doe*, deceased, late of said County. In which Will it appears that said *Richard Roe* was appointed Executor. And whereas, the said *Richard Roe* hath signified to me that he shall move for Letters Testamentary as Executor of said Will: therefore, you, *Sarah Doe*, Widow of said deceased, are hereby notified, to be and appear in said Court, at the next *July* Term thereof, to contest the Probate of said Will, if you please so to do.

*Witness my hand and seal of office, this June 4, 1859.*

JOHN S. JOBSON, *Ordinary*.

NOTE.—A copy of this Citation must be served on the Widow or next of kin.

### *Order by the Court.*

STATE OF GEORGIA, }  
Houston County. }

COURT OF ORDINARY, }  
July Term, 1859. }

Whereas, heretofore, *Richard Roe* filed in the Office of the Ordinary of said County, a writing purporting to be the Nuncupative Will of *John Doe*, deceased, late of said County. And at the *June* Term of said Court, process issued calling upon *Sarah Doe*, Widow of deceased, to appear at this Term, which has been duly served. And whereas, no objection has been filed against the proceedings in the case. And the witnesses being examined in open Court; therefore ordered, that the said Will be pronounced for and declared duly proven, and that the same be recorded; and that Letters Testamentary be issued to said *Richard Roe*, as Executor of said Will.

### *Letters Testamentary.*

STATE OF GEORGIA, }  
Houston County. }

By *John S. Jobson*, Ordinary of said County.  
To all to whom these presents shall come—Greeting.

Know ye, that on the *first* day of *July*, in the year of our Lord eighteen hundred and *fifty-nine*, the Nuncupative Will of *John Doe*, deceased, was exhibited in open Court, (having been previously filed in my office,) and in proper form of law, proved and ordered to be recorded, (a copy of which is hereto annexed.) And administration of the personal Estate of said deceased, was granted to *Richard Roe*, as Executor of said Will. And said *Richard Roe*, having taken the oath and performed all other requisites required by law, is, by these presents, legally authorized to administer the personal Estate of said deceased, conveyed by said Will, according to the tenor and effect thereof, and according to law. And said Executor is hereby required to make a true and perfect Inventory and Appraisement, of the personal property of said deceased, and to make returns thereof, according to law; and to render a true and correct account to the Court of Ordinary, of his actings and doings yearly, touching said Estate, until the administration thereof, is fully completed.

*Given under my hand and seal of office, July 2, 1859.*

JOHN S. JOBSON, *Ordinary*. [L. S.]



A written  
Will cannot  
be changed by  
a nuncupative  
Will.

246. SEC. XXII. No will in writing, concerning any goods or chattels, or personal estate, shall be repealed; nor shall any clause, devise, or bequest therein, be altered or changed by any words, or will by word of mouth only, except the same be, in the lifetime of the testator, committed to writing, and after the writing thereof, read unto the testator and allowed by him, and proved to be so done by three witnesses at the least.

Wills of cer-  
tain persons  
excepted.

247. SEC. XXIII. *Provided always*, that notwithstanding this act, any soldier, being in actual military service; or any mariner or seaman being at sea, may dispose of his movables, wages and personal estate, as he or they might have done before the making of this act.

SEC. XXIV. [Saves the jurisdiction of the archbishops' and other Ecclesiastical Courts.]

22d and 23d  
Ch. 2, Ch. 10.

248. SEC. XXV. And for the explaining one act of this present parliament, entitled "an act for the better settling of intestates' estates," *Be it declared*, That neither the said act, nor anything therein contained, shall be construed to extend to the estates of *feme-coverts* that shall die intestate; but that their husbands may demand, and have administration of their rights, credits and other personal estates. And recover and enjoy the same as they might have done before the making of this said act.

#### 25TH GEORGE II.—13TH AND 27TH ELIZ.

*Abstract of an act of 25 Geo. I., ch. 6, explanatory of the foregoing.*  
—[See Rob. on Frauds, 474.]

Legatee com-  
petent wit-  
ness, but  
legacy void.

249. SEC. I. Reciting that doubts had arisen who were to be deemed legal witnesses within the meaning of the foregoing act, enacts that if any person shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest or gift, or appointment of or affecting any real or personal estate, except charges on real estate, (for payment of debts,) such devise, &c. shall be void as respects such devisee, and he shall be admitted as a witness.

Legatee com-  
petent witness  
if he has re-  
ceived or re-  
fused legacy.

250. Or if (*sec. 3*) any legacy shall be given to a subscribing witness, (whether charged on real estate or not,) and before he gives his testimony, he "shall have been paid or have accepted, or released, or shall have refused to accept such legacy or bequest, upon tender made thereof," he shall be a competent witness. Or if (*sec. 5*) he should die before such acceptance or refusal, his attestation to the will shall be held valid. And (*sec. 4*) in case of such acceptance of the legacy, he shall retain it, whether the will is established or not; and in case of refusal, he shall be forever barred. And shall not (*sec. 7*) after having testified, receive the same, or any benefit thereof, or compensation therefore, on any pretence whatever.

Credibility of  
witness, may  
be considered  
by Court or  
Jury.

251. And (*sec. 2*) where any creditor whose debt is charged on the real estate, is a subscribing witness, he shall be allowed to testify notwithstanding.

252. But (*sec. 6*) the credit of every such witness, under all the circumstances of the case, shall be subject to the consideration of the court or jury, as in other cases.

253. Secs. 8 and 9, relate to possession under, or contest of wills, previous to the 6th May, 1751. Secs. 10 and 11, declare that the act shall extend to any of the American colonies, where by act of assembly, or by usage, the statute 29th Charles II., is received as law, or the attestation and subscription of witnesses are made necessary to the validity of devises of real estate.

AN ACT in relation to the limitation over of Estates.—*Approved Feb. 17, 1854.*

254. SEC. I. *Be it enacted*, That all wills, testaments and other instruments, made and executed after the passage of this act, by which property, either real or personal, is limited over, so as to vest in some other person or persons, after the death of the first taker, upon his or her dying without heirs; or dying without issue; or dying without leaving heirs; or dying without leaving issue; or on failure of issue; or other and equivalent terms; such limitations or terms shall be held and construed to mean a definite failure of issue; that is to say, a failure of issue or heirs at the time of the death of the first taker.

Certain Limitations in Wills how to be construed, and interpreted by the Courts.

AN ACT to legalize certain Judgments of the Courts of Ordinary of this State; to provide for the Probate of Wills in certain cases; and for other purposes.—*Approved Dec. 21, 1857.*

255. SEC. I. All judgments and orders of the courts of ordinary of this State, which have heretofore been recorded, admitting wills to probate, shall not be vacated, annulled or set aside, on account or by reason of any interest or estate, which the ordinaries presiding, may take or be entitled to under such wills, but the said judgments and orders, notwithstanding such interest or estate, shall be good, legal and binding.

Judgments and Orders heretofore made, good and binding.

256. SEC. II. The courts of ordinary of this State, shall have jurisdiction in all cases hereafter arising, to pass judgments and orders, admitting wills to probate, notwithstanding any interest or estate that the ordinary presiding, may take or be entitled to, under such wills; and such judgments and orders, notwithstanding such interest or estate, shall be legal and binding.

Subsequent Judgments and Orders, made legal.

257. SEC. III. Nothing in this act shall be held or construed to take away the right of appeal, as now provided for by law.

## CHAPTER XXXVII.

### MISCELLANEOUS LAWS.

#### ORDER OF ARGUMENT.

AN ACT to prescribe the Order of the Argument of Counsel in Criminal cases.—*Approved, Jan. 22, 1852.*

1. *Be it enacted*, That from and after the passage of this act, the order of the argument of counsel in criminal cases, shall be the same as it now is in civil cases—that is to say, after the testimony is closed on both sides, the State's counsel shall open and conclude the argument to the jury, except in those cases in which the defendant shall introduce no testimony, but in that event the defendant's counsel shall open and conclude the argument to the jury; after the testimony on the part of the State, is closed.

Order of Argument in Criminal cases.

That all laws and parts of laws militating against this act, be and the same are hereby repealed.



## HUSBAND AND WIFE.

AN ACT for the relief of Married Women whose Husbands have deserted them.—*Approved Dec. 30, 1851.*

Earnings of  
deserted Wife  
not subject to  
Husband's  
debts or  
control.

1. *Be it enacted*, That in all cases where a married woman has been deserted by her husband, and has while so deserted, by her exertions and those of her children, or otherwise, acquired property of any kind, the same shall be exempt from the payment of said husband's debts, and be vested in said married woman for her sole and separate use; not subject to the debts, contracts or control of said husband.

AN ACT to define the liabilities of the Husband for the debts of the Wife; and to define the liabilities of property received through the Wife, for the debts of the Husband existing at the time of the Marriage.—*Approved Feb. 28, 1856.*

Husband not  
liable for  
wife's debts;  
nor wife's  
property for  
husband's  
debts.

2. SEC. I. *Be it enacted*, That hereafter, when persons intermarry, the husband shall not be liable for the debts of the wife further than the property received through the wife, will satisfy. And that the property received by the husband through the wife, shall in no case be liable for the debts, defaults or contracts of the husband, existing at the time of the marriage.

## FRIVOLOUS SUITS.

AN ACT to give to Defendants damages for Frivolous Suits against them.—*Approved March 4, 1856.*

*Whereas*, it frequently occurs after a fair and impartial trial between parties litigant, where titles to land are involved, that the plaintiff being cast, renews his suit to the great detriment and annoyance of the defendant, and for the purpose of forcing a compromise from the defendant. *And whereas*, it is the policy of the State to discourage litigation between its citizens; therefore, to this end, and to work a perfect remedy—

Damages for  
frivolous  
suits.

1. SEC. I. *Be it enacted*, That hereafter on a second suit between the same parties, involving titles to land, the jury shall have the right to determine whether said action has any real merit, and if none, they shall have the power to determine what amount of damage the defendant shall have sustained, by and on account of said last mentioned suit, and shall return the same in their verdict, on which judgment may be rendered and *fieri facias* issue, as in other cases involving moneys. Any law, usage or custom, to the contrary notwithstanding.

## CONTINUANCES.

AN ACT relative to Continuances, in certain cases therein named; and for other purposes.—*Approved Feb. 9, 1854.*

Continuance  
not allowed  
when the  
party admits  
what is ex-  
pected to be  
proved.  
Continuance  
for Providen-  
tial cause,  
works no  
detriment as  
to other  
continuances.

1. SEC. I. *Be it enacted*, That no continuance shall be allowed in any case, in any of the courts of this State, on account of absent witnesses, or for the purpose of procuring testimony, when the opposite party is willing to admit and does not contest the truth of the facts expected to be proved. And it shall be the duty of the court in which the case is tried, to order the proof so expected to be made, to be reduced to writing.

2. SEC. II. That continuances for providential cause, when the same shall be so entered on the docket of the court, shall not prevent either party from having the number of continuances, upon all other legal grounds now allowed by law. Any law to the contrary notwithstanding.



## MEETING OF THE GENERAL ASSEMBLY.

AN ACT to change the time of meeting of the General-Assembly of the State of Georgia, from the first Monday in November to the first Wednesday in November.—*Approved March 5, 1856.*

1. SEC. I. *Be it enacted*, That from and after the passage of this act, the time of meeting of the General-Assembly of the State of Georgia, shall be on the first Wednesday in November instead of the first Monday in November as now fixed by law. And that all laws and parts of laws militating against this act, be and the same are hereby repealed.

Meeting of the General-Assembly changed.

## STATUTE OF FRAUDS.

AN ACT for the prevention of Frauds and Perjuries.—*29th Charles II., Chapter 3.*

1. SEC. I. For prevention of many fraudulent practices which are commonly endeavored to be upheld by perjury and subornation of perjury: *Be it enacted, &c.*, That from and after the 24th day of June, which shall be A. D. 1677, all leases, estates, interests of free-holds, or term-of-years, or any uncertain interest of, in or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates-at-will only; and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect. Any consideration for making any such parol leases or estates; or any former law or usage, to the contrary notwithstanding.

Parol Leases of free-hold have the effect of Estates-at-Will only.

2. SEC. II. Except nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two third parts, at least, of the full improved value of the thing demised.

Except Leases not exceeding 3 years, etc.

3. SEC. III. And moreover, that no leases, estates or interests, either of free-hold or term of years, or any uncertain interest, not being copyhold or customary interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall at any time after the said 24th day of June, be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereunto lawfully authorized by writing, or by act and operation of law.

No Leases or Estates of free-hold can be created by parol.

4. SEC. IV. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; [or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person;] or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto, by him lawfully authorized.—[*See 14.*]

Certain Promises and Agreements void, unless put in writing, and signed by the party making them.

5. SEC. V. All devises and bequests of any lands or tenements, devisable either by force of the statute of Wills or by this statute, or by force of the custom of Kent, or by force of the custom of any borough, or any other particular custom, shall be in writing and signed by the party so devising the same,

Devises of Lands to be in writing, and be attested by 3 or 4 witnesses.



or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, by three or four credible witnesses, or else they shall be utterly void and of none effect.

How devised  
interests in  
lands, etc.  
are revoc-  
able.

6. SEC. VI. And moreover, no devise in writing, of lands, tenements or hereditaments, or any clause thereof, shall at any time be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence and by his directions and consent; but all devises and bequests of lands and tenements, shall remain and continue in force until the same be burnt, cancelled, torn or obliterated by the testator, or his directions, in manner aforesaid; or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same. Any former law or usage to the contrary notwithstanding.

Trust inter-  
ests in lands,  
etc. must be  
in writing.

7. SEC. VII. All declarations or creations of trusts or confidences, of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.

Trusts by im-  
plication of  
law, excepted.

8. SEC. VIII. *Provided always*, that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise, or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case, such trust or confidence, shall be of the like force and effect, as the the same would have been if this statute had not been made. Any thing herein-before contained, to the contrary notwithstanding.

Assignments  
of Trusts to be  
in writing.

9. SEC. IX. All grants and assignments of any trust or confidence, shall likewise be in writing, signed by the party granting or assigning the same by such last will or devise, or else shall likewise, be utterly void and of none effect.

Lands, etc.  
liable to Ex-  
ecution  
against *cestui-  
que trust*.

10. SEC. X. It shall and may be lawful for every sheriff, or other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance, hereafter to be made or had; to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rectories, tithes, rents and hereditaments as any other person or persons be in any manner of wise seized or possessed, or hereafter shall be seized or possessed, in trust for him against whom execution is so sued; like as the sheriff or other officer, might or ought to have done, if the said party against whom execution hereafter shall be so sued, had been seized of such lands, tenements, rectories, tithes, rents or other hereditaments of such estate as they be seized

And held in-  
dependent of  
the Trustee.

of, in trust for him, at the time of the said execution sued. Which lands, tenements, rectories, tithes, rents and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed, in trust for the person against whom such execution shall be sued. And if any *cestuique trust* hereafter shall die, leaving a trust in fee-simple to descend to his heir, there and in every such case such trust shall be deemed and taken and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors, for and by reason of such assets, as fully and amply as he might or ought to have been if the estate in law had descended to him in possession, in like manner as the trust descended. Any law, custom or usage to the contrary, in any wise, notwithstanding.

Trust Estate  
shall be assets  
in the hands  
of *cestui-que-  
trust*.



11. SEC. XI. *Provided always*, that no heir that shall become chargeable by reason of any estate or trust made assets in his hands by this law, shall by reason of any kind of plea, or confession of the action, or suffering judgment by *nient dedire*, or any other matter, be chargeable to pay the condemnation out of his own estate; but executions shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come, after the writ purchased, in the same manner as it is to be, at and by the common-law, where the heir-at-law, pleading a true plea, judgment is prayed against him thereupon. Any thing in this present act contained, to the contrary notwithstanding.

But no heir shall become chargeable out of his own Estate, by reason of this act.

12. SEC. XII. And for the amendment of the law in the particulars following: *Be it further enacted, &c.*, That from henceforth, any estate *per auter vie*, shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor, by three or more witnesses. And if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee-simple. And in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands.

Estates for the life of another shall be devisable and regarded as assets.

13. SEC. XVII. No contract for the sale of goods, wares and merchandise, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment; or that some note, or memorandum in writing, of the said bargain, be made and signed by the parties to be charged by such a contract, or their agents, thereunto lawfully authorized.

Contracts for sale of goods for 10*l.* or more, must be in writing.

NOTE.—For the remaining sections of this act, see Will and Codicil.

AN ACT to give a construction to the fourth section of the Statute of Frauds, so far as the same relates to a party Defendant being chargeable upon any special promise, to answer for the debt, default or miscarriages of a third person, &c.—*Approved Jan. 19, 1852.*

14. SEC. I. *Be it enacted*, That from and after the passage of this act, that part of the 4th section of the statute of frauds, so far as the same relates to a party defendant being chargeable upon any special promise, to answer for the debt, default or miscarriages of a third person, &c., be so construed, as to make any party defendant liable and chargeable, upon any special promise, to answer for the debt, default or miscarriages of a third person: *Provided*, the same be reduced to writing, and that the express agreement, in writing, to answer for the debt, default or miscarriages of a third person, be sufficient to sustain an action on the same, although no consideration may be expressed in the written agreement, to do the same.

No consideration need be expressed, if the promise to pay is in writing: *Provided*, the writing be sufficient to sustain an action.

#### MILL AND TOLL.

AN ACT to regulate the Toll to be taken at Mills.—*Approved Jan. 26, 1786.*

1. All owners or occupiers of mills shall well and sufficiently grind, or cause to be well and sufficiently ground, all clean and dry grain, brought to their mills, and in due turn, (as far as five bushels,) as the same may be brought; and may take for toll one-eighth part thereof and no more. And every owner or occupier of a mill, who shall not well and sufficiently grind, or cause to be well and sufficiently ground, as aforesaid, (unless in time of drought, or other sufficient cause, of which the justice may judge,) or not in due turn; or take or exact

Millers must grind in turn, and take one-eighth for Toll, except in certain events.



Penalty for more toll, shall for every such offence, on proof thereof, by one or more credible witnesses, forfeit and pay a sum not exceeding fifteen shillings, to the party injured; recoverable with costs, before a justice of the peace of the county where such offence shall be committed: *Provided always*, that every owner, or occupier of a mill, may grind his or her own grain, at any time.

#### BANKS AND INDIVIDUALS—STOCK-HOLDERS.

AN ACT to regulate the intercourse between Banks and private individuals, so as to subject Banks to the payment of Damages, if they refuse or fail to pay specie when demanded, under certain circumstances.—*Approved Dec. 24, 1832.*

Bank refusing to pay specie, must pay ten per cent. damages.

1. When any bank now incorporated, or which may hereafter be incorporated in this State, shall refuse or fail to pay specie for any of its bills, notes, drafts or other writing, for which they may be bound, when demanded by any individual or individuals, and held as his or their own property; upon suit thereof, such individual or individuals, in addition to the lawful interest, shall receive ten per centum damage, for such refusal or failure, upon the amount so refused or failed to be redeemed in specie.

AN ACT to define the liability of Stock-holders in Banks and other chartered Institutions.—*Approved Dec. 11, 1858.*

Liability of Stock-holders how long continued.

2. SEC. I. *Be it enacted*, That the liability of stock-holders in banking and other chartered institutions, shall not cease upon the expiration of the charter of said company, but that the same liability shall exist after, as well as before, the expiration of said charter, until the whole business of said company is fully settled up. Any law, usage, custom or practice, to the contrary notwithstanding.

SEC. II. [Repeals conflicting laws.]

#### CURRENCY.

AN ACT to regulate the manner of keeping Public Accounts within this State.—*Approved Feb. 22, 1796.*

Accounts to be kept in dollars and cents.

1. SEC. I. From and after the first day of March, 1796, all accounts in the public offices, and all accounts of the tax-collectors of this State, shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Verdict to be in dollars, etc.

2. SEC. II. The verdicts of juries, on all contracts which shall be made after the first day of March next, shall be expressed conformable to this regulation.

AN ACT to prevent the clipping and mutilating the Current Coin of this State.—*Approved Feb. 3, 1789.*

*Whereas*, the most mischievous consequences are daily experienced by the good citizens of this State, from the nefarious practice of clipping and mutilating the Circulating Specie thereof; to prevent the same—

Coin to pass by tale.

3. SEC. I. That all gold and silver coin of full weight, shall pass current, by tale, within this State.

#### BIRTHS MAY BE RECORDED.

AN ACT to establish an office for Recording the Births of the Citizens of this State, in each County of the said State.—*Approved Dec. 19, 1823.*

*Whereas*, much inconvenience has been experienced in this State, from the difficulty of obtaining testimony of the ages of persons interested in questions of rights before our courts. *And whereas*, embarrassing difficulties frequently impede the correct administration of justice on this subject; for remedy whereof—

1. *Be it enacted*, That from and immediately after the passing of this act, it shall be the duty of the clerks of the courts of ordinary, in each county respectively, to enter and register in a book, to be kept for that purpose, the names of all persons who may report themselves to him, or who may be reported by their parents or guardians, as well as all those who may be hereafter born within the said county, and who may be reported, as aforesaid; upon due proof being made by affidavit, or oath, to the said clerk of the said birth. And that the said clerk shall be entitled to take and receive, for each registry which he shall be called on to make, the sum of twenty-five cents.

Births to be registered.

Clerk's fee.

2. SEC. II. The parents or guardians of children now in life, or who may be hereafter born, may upon application to the clerk of the court of ordinary aforesaid, and upon payment of the aforesaid sum to the said clerk, require him to enter the name of the said child, with the time and place of his or her birth.

Clerk must register as required.

3. SEC. III. The said clerk shall forfeit and pay the sum of five dollars for each and every refusal to enter the said births, as aforesaid, upon such application, as aforesaid, being made.

4. SEC. IV. The said entry, so as aforesaid made, shall be received and held as evidence of the birth and age of such person or persons as it purports to represent, in any court of law or equity in this State, by the production, either of the original book of entry or of the certificate of the same, under the hand and seal of the said clerk; and for which certificate the said clerk shall receive twenty-five cents.

Registry made evidence.

### BURYING-GROUNDS.

AN ACT to protect private Burying-Grounds from injury and destruction.

—Approved Dec. 27, 1842.

1. SEC. I. *Be it enacted*, That from and after the passage of this act, that whenever any vender of real estate, upon which there is a burying-ground situate, shall choose to reserve the same from sale, in the deed of conveyance, the purchaser or purchasers under him, shall not be permitted to infringe, in any manner, upon the same; but shall preserve and as far as possible, protect the same from both injury and destruction.

Burying-Grounds may be reserved from sale, and must be protected.

2. SEC. II. Should any person or persons, by themselves and servants, mutilate or in any wise injure and destroy the same, he, she or they shall be guilty of a trespass; and when found guilty upon an indictment, shall be subject to a fine of five hundred dollars.

Injuries to, how punished.

3. SEC. III. Whenever real estate shall hereafter be sold by any sheriff, marshal, coroner, administrator or executor, a reservation of the burying-ground shall be made; and all trespassers upon the same, shall be liable under the second section of this act.

NOTE.—Upon sales by public officers, it will be seen “a reservation of the Burying-Ground shall be made;” in order that this may be legally done, the officer, in his advertisement of the property, should state that “the Burying-Ground on the premises is reserved from sale,” and on the day of sale, when the property is put up, should expressly announce that the Burying-Ground is reserved.



## CHANGE-BILLS, ETC.

AN ACT to repeal the second and third sections of an act entitled "an act to repeal an act entitled an act to alter and amend an act entitled an act more effectually to secure the solvency of all the Banking Institutions in this State," as passed on the 24th day of December, 1832; assented to 21st December, 1833; assented to 23d December, 1840. And to prescribe the pains and penalties against private Banking and the issuing Change-Bills; and for other purposes therein mentioned.—*Approved Dec. 10, 1841.*

Second and third sections of act of 1840 repealed.

1. SEC. I. *Be it enacted*, That the second and third sections of the above-recited act, be and the same are hereby repealed. And that all persons or corporations who may have incurred the pains and penalties of the second and third sections of said act, be relieved from the same.

Making and issuing Change-Bills, how punish'd.

2. SEC. II. Any person or persons, body corporate or politic, who may hereafter make, issue, circulate, pay or tender in payment [*see 5,*] any check, order, draft or bill for the payment of money, or other thing, having the form or similitude of a bank-note, or having the form or similitude and intended to be used and circulated as money or circulating medium, except such banking institutions and corporations as by law are authorized to issue notes or bills for circulation, shall be liable to indictment as for a misdemeanor, and on conviction, shall be punished by fine or imprisonment in the common jail of said county, or both, at the discretion of the court.

Each issue a new offence. Who liable.

3. SEC. III. The making or issuing each check, order, draft or bill, for the payment of money, or other thing having the form or similitude of money, to be used and circulated as money or circulating medium, shall be considered and held as a separate and new offence. And that in case of the issuing or circulating of said checks, orders, drafts, or other thing having the form or similitude of money, by any corporation or body politic, the officer or member of said incorporation or body politic, or the person signing said checks, orders, or other thing having the form or similitude of money, or intended to be used as money, shall be liable to the provisions and penalties of this act.

Grand Jury must present and Solicitor-General must prosecute all offenders.

4. SEC. IV. It shall be the duty of the grand juries of the several counties of this State, to notice and present both individuals and incorporations for every violation of the provisions of this act; and the solicitors-general to prosecute upon such presentments. And to insure the execution and enforcement of the provisions of this act; [it shall be the duty of the judges of the superior courts of this State, at the opening of each court, to give the provisions of this act, specially in charge to grand-juries; *this provision repealed by act of 1856.*] And that all laws and parts of laws militating against the provisions of this act, be and the same are hereby repealed.

AN ACT to amend the laws of this State regulating the Circulation of Change-Bills, and to repeal so much thereof as makes it penal and criminal for innocent holders of such Bills to pass or circulate the same.—*Approved Dec. 28, 1842.*

Innocent holders exempt.

5. SEC. I. *Be it enacted*, That from and after the passage of this act, all laws of this State, making it penal or criminal for innocent holders of change-bills to pass or circulate the same, be and the same is hereby repealed: *Provided always*, that no part of this act shall be so construed as to relieve the makers of change-bills from the penalties of the law.

SEC. II. All laws and parts of laws militating against this act, be and the same are hereby repealed.

NOTE.—The Act of 1840 is omitted as being superseded in its provisions.

## DEADLY WEAPONS.

AN ACT to prohibit the sale of Deadly Weapons; and to prescribe the manner of carrying the same, and to punish for a violation of the same; and to repeal an act entitled "an act to guard and protect the citizens of this State against the unwarrantable and too prevalent use of Deadly Weapons," assented to 25th December, 1837.—*Approved Jan. 12, 1852.*

1. SEC. I. *Be it enacted*, That from and after the passage of this act, it shall not be lawful for any person or persons whatever, to have or carry about their persons, any pistol, (except horse-man's pistols,) dirk, sword-in-a-cane, spear, bowie-knife or any other kind of knives, manufactured and sold for the purpose of offence and defence, save and except in the manner herein-after mentioned. Pistols, etc. not to be carried but in a certain manner.

2. SEC. II. No person or persons shall have or carry about their persons, any one or more of the weapons enumerated and embraced in the first section of this act, except such person or persons shall have or carry such weapon or weapons in an open manner and fully exposed to view. Must be carried open and exposed to view.

3. SEC. III. Any person or persons violating any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, at the discretion of the court. Violations how punished

4. SEC. IV. An act entitled "an act to guard and protect the citizens of this State, against the unwarrantable and too prevalent use of Deadly Weapons," assented to December 25th, 1837, be and the same is hereby repealed. And all laws and parts of laws militating against this act, be and the same are hereby repealed. Act of 1837 repealed.

NOTE.—The Act of 1837 (repealed by the foregoing) was amended in some of its provisions, by the Act of 1845; the Act of 1837 being repealed, the amendatory Act of 1845, is also repealed.

## GUN-POWDER.

AN ACT to regulate the Transportation of Gun-Powder, and to authorize the forfeiture of such as shall be transported in violation of the provisions of this act.—*Approved Dec. 26, 1831.*

1. SEC. I. From and after the passage of this act, it shall be the duty of "GUN POWDER" to be all owners, agents and others, who may or shall have any gun-powder, (exceeding in quantity five pounds,) transported upon the waters, or within the limits of this State, to have the word "GUN-POWDER" marked on each package. marked on each package.

2. SEC. II. All gun-powder, (exceeding five pounds in quantity,) which shall hereafter be transported, or engaged for transportation, upon any of the waters, or within the limits of this State, without being marked as directed in the first section of this act, shall be liable to seizure and forfeiture, one-half to the informer, the other for the use of the volunteer companies most convenient or contiguous to the place of seizure or forfeiture. Penalty for neglect.

SEC. III. All laws or parts of laws militating against this law, are hereby repealed.

## GREAT SEAL OF GEORGIA.

AN ACT for altering the Great Seal of the State of Georgia.—*Approved Feb. 8, 1799.*

*Whereas*, the Constitution of this State directs the alteration of the Great Seal thereof; therefore—

1. SEC. I. *Be it enacted*, That the great seal of the State of Georgia, shall be made of silver, and the size of two and a quarter inches in diameter. Size of the seal.



The Device.

2. SEC. II. The device shall be as follows:—on the one side, a view of the sea-shore with a ship bearing the flag of the United States, riding at anchor near a wharf, receiving on board hogsheads of tobacco and bales of cotton, emblematic of the exports of this State; at a small distance, a boat landing from the interior of the State, with hogsheads, &c. on board, representing her internal traffic. In the back part of the same side, a man in the act of ploughing; and at a small distance, a flock of sheep, in different pastures, shaded by a flourishing tree; the motto, on this side, Agriculture and Commerce, 1799. [That the other side contain three pillars supporting an arch, with the word Constitution engraved within the same; emblematic of the Constitution supported by the three departments of government, viz: the legislative, judicial and executive; the first pillar to have engraven on its base, Wisdom; the second, Justice; and the third, Moderation.] On the right of the last pillar, a man standing with a drawn sword, representing the aid of the military in the defence of the Constitution; the motto, State of Georgia, 1799.

The Governor to have the seal made; where it shall be deposited.

3. SEC. III. That his excellency the governor, be and he is hereby authorized to contract with some fit and proper person for making of the aforesaid seal, in manner and form aforesaid; and shall deposit the same in the office of the secretary of State. And on and after the fourth day of July next, the said seal shall be considered as the great seal of the State of Georgia, and applied and made use of as such, in all cases as the law directs. And the old, or present great seal, shall be broken in presence of his excellency the governor.

AN ACT supplementary to the foregoing.—*Approved Dec. 5, 1799.*

*Whereas*, it appears that so much of the second section of the before-recited act, as are contained in the words following, to wit, [*the words in brackets, in sec. 2,*] could not be completely carried into execution, inasmuch as from examination of the size of the great seal established by the aforesaid act, an impression of these words, Wisdom, Justice, and Moderation, engraven on the three aforesaid pillars, would not be legible or intelligible—

Part of the former act repealed.

New seal established.

4. SEC. I. *Be it enacted*, That that part of the said before-recited section, to wit, the words, “the first pillar, engraven on its base, Wisdom; the second, Justice; and the third, Moderation,” be and the same is hereby repealed. And that the great seal, as now deposited and in operation in the secretary of State’s office of this State, with the words, Wisdom, Justice and Moderation, engraven in a wreath on the several pillars, emblematic of the several departments of the government, be and is hereby sanctioned, ratified and declared the great seal of the State of Georgia; and all grants, papers and documents, to which the same has been affixed by order of the executive authority, since the fourth day of July last past, (the period when the former great seal, by the aforesaid act, ceased to be the great seal, and the new great seal was, by the said act, to be in operation,) are hereby also sanctioned, ratified and declared to be as valid, in all courts of law and equity, as they possibly would or could have been, had the words Wisdom, Justice and Moderation, been engraven on the base of the respective pillars, agreeably to the directions of the said second section.

*Whereas*, there is now in the secretary of State’s office, a number of grants of land issued previously to the fourth day of July last past, which have not heretofore had the former great seal of the State affixed to them—

New Seal to be affixed to certain Grants.

5. SEC. II. *Be it enacted*, That the secretary of State shall affix the present great seal of this State, as declared by this act, to any grant or grants which have been issued for land, under the authority of this State, previous to the fourth day of July past; which have not heretofore had the former great seal of this State affixed to such grant or grants, as aforesaid; which shall be held, deemed and considered valid, in all courts of law and equity. Any law, to the contrary notwithstanding.



## SERVANTS, NOT SLAVES.

AN ACT for the Government of Servants, (not Slaves,) imported or migrating into this State.—*Approved Feb. 6, 1796.*

*Whereas*, the encouragement of migration into this State, of white inhabitants, is of primary consequence thereto, and many valuable artisans and useful persons of the poorer class of Europeans, desirous of migrating hither, have not where-withal to defray the charge of passage money and other incidental expenses attending the same; and either indent themselves as servants, previous to embarking, or agree with the captains, owners, super-cargoes of vessels, or others, to indent themselves as servants, on their arrival at any of the ports of this State, or the United States, as a compensation for such passage money and expenses. *And whereas*, it has happened on such arrival, disputes have arisen between such persons so migrating and those who have borne their expenses, as aforesaid, or those to whom they were, previously to embarkation indented. And doubts have been entertained of the validity of any contracts made in a foreign country, with respect to binding and holding to service, any person so migrating, unless a new agreement be entered into after his or her arrival within this State; for remedy whereof—

SEC. I. *Be it enacted*, That from and after the passing of this act, all white servants brought into this country, under any agreement made in foreign countries, and who shall not previously to embarkation therefrom have been indented, shall be bound to perform the same. And in case of refusal to indent himself, herself or themselves, on application and demand, it shall be lawful for the person or persons with whom such servants have so agreed or contracted, to apply to any three justices of the county into which such servants may arrive, one of whom to be a judge of the inferior court thereof, who are hereby empowered and required to have the parties brought before them, and decide on the validity and good faith of such contract; and if they, or a majority of them, shall judge the same binding and valid, it shall be the duty of such magistrates, or a majority of them, to indent such servants, by an order to be entered up of record, in the clerk's office of the inferior court, which order shall be received and considered as an indenture, and held to be binding as in law, to all intents and purposes, as if the same had been voluntarily entered into by such servants, after such their arrival: *Provided nevertheless*, that if such servant be of the age of nineteen years, they shall not be indented for a longer term than five years; and if under that age, for a longer period than their arrival at the age of twenty-four years. And if at the age of fourteen, until they arrive at the age of twenty-one years. And the said magistrates are also, hereby empowered to decide on the age of such servants, and bind them accordingly; which decision shall be entered up of record with such order, in the clerk's office of said inferior court.

Contracts with white servants made abroad, how enforced in this State.

How long they may be bound.  
Age how determined.

2. SEC. II. All indentures made between masters, super-cargoes or owners of vessels, or other persons in foreign countries, and persons wishing to migrate to this State, or the United States, and thus becoming servants, as aforesaid, shall be held and received as valid and binding in law, on their arrival within any port or place within this State, as if such indenture had been voluntarily entered into by the parties after such their arrival.

Indentures executed in foreign countries, good in this State.

*And whereas*, it is necessary and proper, and humanity requires that the servants so held to service, should in return therefor, meet with humane and kind treatment from persons to whom they may be bound—

3. SEC. III. *Be it enacted*, That all masters and owners of servants coming within the intention of this act, shall find and provide for their servants, wholesome and competent diet, clothing and lodging, in health, and proper and necessary medicine and attendance in sickness; and shall not, at any time, give

Servants how to be treated.



Remedy  
against Mas-  
ter for ill-  
treatment.

Remedy of  
the Master  
against re-  
fractory  
Servant.  
Power of the  
Court.

Other con-  
tracts for  
further ser-  
vice, but by  
lease of the  
Court.

Servant may  
own property.

Sick servant  
to be provided  
for.

Master may  
not turn away  
sick servant.

To be clothed  
when dis-  
charged.

Indentures  
assignable.  
Assignee how  
bound, etc.

immoderate correction; or, at any time, whip such persons naked, without an order from two or more magistrates, for that purpose, after a hearing from both parties; and shall not task them with immoderate labor. And such servants shall have their complaints received by any justice of the peace, who if he finds cause, may bind the master or owner over, until the complaint can be heard before the inferior court of the county, where they shall reside; and all complaints of such servants shall and may, by virtue hereof, be received by the said court, in form of petition, without the formal process of an action. And full force and authority is hereby given to the said court, at their discretion, (having first summoned their masters or owners to justify themselves, if they think fit,) to adjudge, order and appoint, what shall be necessary and proper, as well with respect to the diet, lodging, clothing and excessive labor, as to the correction of the servant or servants complaining; and if any master or owner shall not thereupon comply with the court's order, the said court is hereby authorized and empowered, upon a second just complaint, to release and acquit such servant or servants, from any future service, by entering an order to that purport, on the records of the court. And in case it shall be found upon examination before the said court, or three justices, that the complaint of such servant or servants was unfounded or malicious, then the inferior court aforesaid, shall have power to direct and order any moderate punishment, not exceeding thirty-nine lashes. And in case such servant shall absent him or herself from his or her said master or owner's service, the said inferior court shall be and hereby is authorized to indent such servant, for such absence, a term, not exceeding four days for every day's absence, more than the time he or she were originally indented for, by an order entered, as aforesaid, on the court books.

4. SEC. IV. No master or owner of any servant, shall during the time of such servant's servitude, make any bargain with him or her for further service, or other matter or thing, relating to liberty or personal profit, unless the same be made with the approbation of the inferior court of the county where they so reside. And if any servant shall at any time, during such service, by gift or other lawful means, acquire any goods or money, such servant shall have the property thereof, to his or her own sole use and benefit. And if any servant shall, during such servitude, happen to fall sick or lame, so that he or she becomes of little or no use to his or her master or owner, the master or owner, shall at his or her own expense, provide such servant with necessary medicine and attendance, during such sickness; and shall not put away such servant, but shall maintain him or her during the whole time he or she were obliged to serve. And if under any pretence of freedom, any master or owner shall put away any such sick or lame servant, and such servant shall become chargeable to the county, such master or owner shall forfeit and pay a sum equal to the maintenance of such person, to be recovered by distress, monthly or weekly, at the option of the magistrates superintending the poor-rates of such county.

5. SEC. V. At the expiration of the time of service, every master or owner shall supply every such servant with a new and sufficient suit of clothes, to be approved of by any three or more justices of the said county, under a penalty not exceeding thirty dollars, to be recovered in a summary way, by such servant, before the said justices.

6. SEC. VI. All servants imported or migrating, and indented as aforesaid, may be transferred, by assignment of the indentures, either by the persons they originally contracted with, or their assigns; and such persons to whom such servant may be so assigned, shall be subject to the clauses and provisoes of this act, and to every matter and thing expressed to be



done or performed, on the part of the original owners, importers or contractors.

NOTE.—Had the Compiler the authority, he certainly would have omitted the foregoing statute as obsolete. At the time of its passage and for several years thereafter, importations of white servants were common, but such importations are now unknown, and it is probable, will never again recur.

### LAWS REVIVED.

AN ACT to continue the several Laws of this State, near expiring; and for other purposes therein mentioned.—*Approved July 30, 1783.*

*Whereas*, several necessary laws of this State, passed before the revolution, are near expiring, and it is expedient, for the welfare thereof, that they should be further continued—

1. SEC. I. *Be it enacted*, That an act passed the 7th day of April, 1763, to prevent persons throwing ballast or rubbish, or falling trees, into the rivers and navigable creeks within this State, then Province, and for keeping clear the channels of the same. Act of April, 1763; Rubbish, etc.

And also, an act to amend the said act, passed the 25th day of March, 1765, *[on the same subject.]* Same subject.

And also, an act passed the 6th day of March, 1766, for punishing seamen and mariners, neglecting or deserting their duty, on board their respective ships or vessels; and for preventing seamen or mariners from being harbored or running in debt. Act of March, 1766; Seamen.

And also, an act to prevent frauds and deceits in selling beef, pork, pitch, tar, turpentine, and fire-wood, passed the 6th day of March, 1766. Act of 1766; Beef, Pork, etc.

And also, an act to amend *[the foregoing]* passed the 24th day of December, 1768.—*[On the same subject.]* Same subject.

And also, an act passed the 18th day of November, 1765, for the establishing and regulating patrols, and for preventing any person from purchasing provisions, or any other commodities, from or selling such to any slave, unless such slave shall produce a ticket from his or her owner, manager or employer. Act of Nov., 1765; Trading with Slaves.

And also, an act to prevent stealing of horses and neat cattle, and unlawfully branding, marking, killing or driving the same; passed the 29th day of September, 1773, shall severally and respectively be and the same are hereby continued in full force until repealed by this or some future General-Assembly. Act of Sept., 1773; Branding, etc.

*And whereas*, at the time of the invasion of this State by the British troops, in the year 1778, the public records were sent away to prevent their falling into the hands of the enemy, and have not yet been returned into this State, from which cause the several laws heretofore passed, and which may be now expiring, cannot with precision be known, and if no remedy be applied, there is reason to believe great injury may accrue to the citizens of this State; for the prevention thereof—

2. SEC. II. *Be it enacted*, That all laws passed before the 29th day of December, 1778, which are or may be near expiring, and that are not repugnant to the Constitution of this State, or in their nature temporary, be and they are hereby declared to be in full force; and that they shall continue in force until repealed by this or some future Legislature. Laws prior to 1778, near expiring perpetuated.

AN ACT for reviving and enforcing certain Laws therein mentioned.—*Approved Feb. 25, 1784.*

*Whereas*, during the late convulsions in this State, several salutary laws were lost and destroyed, that had, from time to time, been enacted by the



General-Assembly of the same. And among others, an act reviving and putting in force such and so much of the laws of the Province of Georgia, as were adjudged necessary to be in force, in this State. *And whereas*, the said laws are, for the most part, suited to the circumstances of the people. *And whereas*, it is absolutely necessary for the well governing every State, that laws properly adapted to the circumstances of the inhabitants, be at all times in force—

Laws in force on the 14th May, 1776, perpetuated.

3. SEC. I. *Be it enacted*, That all and singular, the several acts, clauses and parts of acts, that were in force and binding on the inhabitants of the said Province, on the 14th day of May, A. D. 1776, so far as they are not contrary to the Constitution, laws and form of government now established in this State, shall be and they are hereby declared to be in full force, virtue and effect, and binding on the inhabitants of this State, immediately from and after the passing of this act, as fully and effectually, to all intents and purposes, as if the said acts, and each of them, had been made and enacted by this General-Assembly, until the same shall be repealed, amended or otherwise altered by the Legislature. And also, the common laws of England, and such of the statute laws, as were usually in force in the said Province, except as before excepted.

Common and statute laws of England.

Fines and forfeitures payable to the King, to be paid to the State.

Public Officer's authority continued.

4. SEC. II. All fines, penalties and forfeitures, inflicted or made payable, by any of the afore-mentioned acts, to the king of Great Britain, are hereby directed to be paid into the public treasury of this State, for the use of the same. And that all authorities given and enjoined by any of the said acts, to any public officer, are hereby given and enjoined, to such public officers, appointed under the constitution or form of government established in this State, and agreeable to the same.

AN ACT to carry into effect the eighth section of the third article of the Constitution.—*Approved Dec. 6, 1799.*

Laws to be arranged and reported to the Governor.

5. SEC. I. For the more general promulgation of the laws of this State, the Secretary of State, with two commissioners, who shall be appointed by the legislature, for that purpose, shall examine into, digest and arrange the several laws thereof, now in force, and report the same to his excellency the governor, who shall approve or disapprove of the same.

If approved, 1000 copies to be taken by the State.

6. SEC. II. If his excellency the governor, shall approve of such digest, of the laws of the State, as may be reported to him, in pursuance of this act, that then the Secretary of State, shall under the direction of the executive thereof, cause to be printed, in a quarto, bound, volume or volumes, 1000 copies of such digest of the laws of this State, as may be reported by the aforesaid commissioners and Secretary of State, in terms of this act.—[*This Compilation is known as Marbury and Crawford's Digest.*]

7. SEC. V. The laws of this State, which shall in future be passed, shall at the end of each succeeding session, be printed and distributed, in manner and form aforesaid.

AN ACT to compile and arrange the Laws and Resolutions of this State, passed since the political year 1800.—*Approved Dec. 12, 1809.*

Laws and Resolutions since 1800, to be compiled and printed.

8. SEC. I. During the year 1810, the laws of this State, passed since the political year 1800, (and the concurred and approved resolutions, except such as relate to elections by the General-Assembly;) and every tenth year thereafter, shall be compiled, arranged and printed.—[*See Act of 1847.*]



9. SEC. V. As often as the laws of this State shall be compiled, arranged and printed, in pursuance of this act, his excellency the governor shall reserve 500 copies reserved for future use.  
500 volumes, for such further distribution as the legislature may think proper.  
—[*Under this Act, Clayton's, Lamar's and Dawson's Digests were compiled.*]

AN ACT to prescribe the form of a Digest, or Manual of the Laws of Georgia.

—*Approved Dec. 21, 1819.*

10. SEC. I. During the year 1820, a digest of the laws of this State shall be formed and arranged, which shall include all acts and resolutions of the legislature, heretofore passed, and which may be passed during the present session, which are public and general, and excluding such as are private or local; and also, such as have been repealed. Public and General Laws to be digested.

11. SEC. II. To the said digest shall be added an appendix which shall contain the Constitution of the United States and the State of Georgia, as amended; the statute of Frauds and Perjuries, passed in the 29th year of the reign of Charles II.; also, all acts relating to writs of *Habeas Corpus*. Appendix and what it shall contain.

AN ACT to prescribe how the Laws and Resolutions of this State shall be compiled and arranged, and to repeal all laws militating against this act.—*Approved Dec. 29, 1847.*

12. SEC. I. *Be it enacted*, That whenever the legislature of this State shall deem it expedient and proper that the laws and resolutions of this State, or any part of them, should be compiled and arranged, that then it shall be the duty of the said legislature to prescribe by law what shall be the character of the laws and resolutions intended to be compiled and arranged, and how and when the same shall be performed. And that all laws and parts of laws, militating against this act, are hereby repealed. Compilation of the Laws, how and when to be performed.

NOTE.—The Act of 1809 provided that “During the year 1810,” the Acts and Resolutions passed since the year 1800, should be arranged, compiled and published; that Act further provided, that the same thing should be done “every tenth year thereafter:” the Act of 1847 virtually repeals this provision of the Act of 1809, by directing the manner in which the required duty is to be performed, and leaving the time to the discretion of the Legislature.

#### LOTTERIES AND GAMING.

AN ACT to suppress Lotteries, and prevent other excessive and deceitful Gaming.—*Approved Feb. 29, 1764.*

*Whereas*, many good and wholesome statutes of Great Britain have, from time to time, been enacted and established, to prevent Lotteries and Gaming; and great mischiefs are daily found to arise from such practices, both to trade and the community in general, as many idle, loose, and disorderly persons find means thereby to support themselves in a dishonest, dissolute course of life, and the younger sort of people, and others, are frequently drawn in and deceived, to the loss of their time and ruin of their fortunes—

1. SEC. I. *Be it enacted*, That from and after the passing of this act, if any person or persons shall erect, set up, or expose to be played, drawn, or thrown at; or shall cause or procure to be erected, set up, exposed to be played, drawn or thrown at; any lottery, under the denomination of a sale, or sales, of houses, lands, plate, jewels, ships, goods or other things, or for money, or any undertaking whatsoever, in the nature of a lottery, by way of chances; either by dice, lots, cards, numbers, figures or tickets; or shall make, print, advertise or publish, or cause to be made, printed, advertised or published, proposals or schemes for advancing small sums of money, by several persons, amounting in the whole to large sums, to be divided among Persons establishing Lotteries or Games of Chance, shall forfeit 500 pounds.



them by chances of prizes; or shall deliver out, or cause or procure to be delivered out, tickets to the persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, plate, jewels, ships or other goods or chattels, by any game, method or device whatsoever, depending upon or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine or device of chance, of any kind whatsoever; or shall be adventurers in, or pay any moneys, or other consideration, or any ways contribute unto any of the said games, lottery or lotteries, sale or sales, such person or persons, and every or either of them, on being convicted thereof, on the oath or oaths of one or more credible witness or witnesses, or on the confession of the party or parties accused, shall forfeit and lose the sum of five hundred pounds, lawful money of this Province; to be recovered by action of debt, or information in the general court of pleas.

How to be collected and disposed of. Sales to be void and of no effect.

Articles forfeited.

But one imparlance. Party being unable to pay fine may be imprisoned.

Bonds, Notes, etc. given for Gaming Debts, void.

All Conveyances and Encumbrances of Land, to inure it to the benefit of heir.

Deeds, Mortgages, etc. in opposition to rights of heirs, void.

The one moiety of such forfeiture to be to his majesty, for the support of the government of this Province, and the other moiety to the informer. And all and every such sale or sales of houses, lands, plate, jewels, ships, goods and other things by any game, lottery or lotteries, machine, engine or other device whatsoever, depending upon or to be determined by chance or lot, shall and are hereby declared to be void, to all intents and purposes. And whatever shall be so set up and exposed to sale, shall be forfeited to such person or persons who shall sue for the same, by action, bill, plaint or information, in his majesty's general court of pleas of this Province, wherein no essoign, protection, wager of law, or more than one imparlance, shall be allowed. And in case of any offender against this act, not having sufficient goods and chattels whereon to levy the penalty hereby inflicted, or not immediately paying the said penalty, or giving security for payment thereof, it shall and may be lawful for the justices, before whom such person or persons shall be convicted, to commit him or them to prison, there to continue and remain, for any time not exceeding twelve months.

2. SEC. II. From and after the passage of this act, all bills, bonds, judgments, mortgages, notes of hand, or other securities, or conveyances whatsoever, given, granted, drawn, or entered into, or executed by any person or persons whatsoever, where the consideration of such conveyance or securities shall be for any moneys, or other valuable things whatsoever, won by gaming, or playing at cards, dice, tables, tennis-bowls, or other game or games, bet or bets, chance or chances, of any kind whatsoever; or by betting on the sides or hands of such as do game at any of the games aforesaid, or for reimbursing or repaying any money knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, as aforesaid; or who shall, during such game, so play or bet, shall be utterly void and of none effect, to all intents and purposes whatsoever; any statute or usage, to the contrary thereof notwithstanding. And where such mortgages, securities or other conveyances, shall be of lands, tenements, or hereditaments, or shall be such as encumber or affect the same, such mortgages, securities or other conveyances, shall enure and be to, and for the sole use and benefit of, and shall devolve upon such person or persons as should or might have, or be entitled to such lands, tenements or hereditaments, in case the said grantor or grantors thereof, or the person or persons so encumbering the same, had been naturally dead, and as if such mortgages, securities or other conveyances, had been made to such person or persons, so to be entitled, after the decease of the person or persons so encumbering the same. And all grants and conveyances to be made for the preventing such lands, tenements or hereditaments, from coming to or devolving upon such person or persons hereby



intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect.

3. SEC. IV. And for the better discovery of the moneys or things so won and received, and to be sued for and recovered, as aforesaid, *It is further enacted*, That all and every the person or persons, who by virtue of this present act, shall or may be liable to be sued for the same, shall also, be obliged and compellable, to answer upon oath, such bill or bills in equity, as shall be preferred against him or them, for discovering the sum or sums of money or other things, so won and received at play, as aforesaid: *Provided nevertheless*, that upon the discovery and repayment of the money or other thing, so to be discovered and repaid, as aforesaid, together with the costs that may have accrued, such person or persons shall be acquitted, indemnified and discharged from any further or other punishment, forfeiture or penalty, inflicted by this act.

Upon Discovery and repayment, Defendant discharged.

4. SEC. V. And for preventing such quarrels as shall or may happen upon the account of gaming, *Be it further enacted*, That in case any person or persons, upon account of any money won by gaming, playing or betting, at any of the games aforesaid, shall assault and beat, or challenge, or provoke to fight, any other person or persons, such person or persons so assaulting, beating, challenging or provoking to fight, on being thereof convicted, upon an indictment or information, to be exhibited against him or them, for that purpose, shall forfeit to his majesty, [*to the State*,] his heirs and successors, the sum of twenty pounds, lawful money of this Province, for the use of the said Province; and shall also, suffer imprisonment, not exceeding six months, without bail or mainprize.—[*See Cobb's Penal Code*, 152 and 153.]

Persons fighting, challenging, etc. on account of Gaming, shall forfeit 20l. and be imprisoned.

AN ACT additional to the foregoing.—*Approved March 25, 1765.*

*Whereas*, it hath been found by experience, that the above-mentioned act, hath not altogether answered the several good ends and purposes thereby intended—

5. SEC. I. *Be it enacted*, That from and after the passing of this act, if any person or persons whosoever, who at any time or times, sitting or sittings, within the space of twenty-four hours, by playing at cards, dice, tables or any other game or games; or by betting on the sides or hands of such as do play at any of the games aforesaid, or any game whatever, shall lose, to any one or more person or persons so playing, or betting, in the whole, the sum or value of five shillings, lawful money of this Province, and shall pay or deliver the same, or any part thereof; the person or persons so losing and paying or delivering the same, shall be at liberty, at any time within six months, then next following and not after, to sue for and recover the moneys or goods so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs, by a warrant from a justice of the peace, (in nature of a warrant for debt,) founded on this act; in case the moneys or effects so lost and paid or delivered, shall not exceed the value of eight pounds, lawful money of this Province; and in case the moneys or goods, so lost and paid or delivered, shall exceed that sum, the loser shall and may recover the same from the winner or winners, with costs, by action of debt, founded on this act, to be prosecuted in his majesty's general court of pleas, in this Province; to which action or suit, no essoign, prosecution, wager of law, privilege or more than one imparlance, shall be allowed; [and in which action or suit it shall be sufficient for the plaintiff to allege that the defendant or defendants are indebted to him, or received to the plaintiff's use, the moneys or effects so lost and paid, or converted the moneys or effects, so won of the

Money lost at play may be recovered back by the loser, within six months.

May be recovered in Justice's Court, if not over \$50. If over that sum, in the Sup. Court. But one continuance allowed.

Action must be brought as required by the Judiciary Act.]



After six months, any other person may sue for and recover the penalty; one half to the Poor of the County.

the plaintiff, to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this act, without setting forth any special matter.] And in case the person or persons who shall lose such money or effects, as aforesaid, shall not, within the time prescribed, really and *bond fide* sue, and with effect, prosecute for the moneys or effects so by him or them lost and paid or delivered, as aforesaid, it shall and may be lawful to sue for and recover the same, with full costs of suit, against such winner or winners, as aforesaid, unless such winner or winners, within ten days after the winning such moneys or effects, shall repay or redeliver to the loser, such money or effects, so won and received, as aforesaid, together with such costs of suit as may have accrued before the repayment or redelivery of such money or effects. The one moiety of the money or effects so recovered, shall be to the use of the person or persons, (other than the person losing,) who shall sue for them, and the other moiety, to the use of the poor of the parish [county] where the offence shall be committed. Any thing in the herein-before mentioned law, to the contrary thereof, in any wise, notwithstanding.

AN ACT to prevent the Drawing of Lotteries, or sale of Lottery Tickets, in this State.—*Approved Dec. 23, 1833.*

Lotteries prohibited.

6. SEC. I. From and immediately after the first day of May next, all and every lottery and lotteries, and device and devices in the nature of lotteries, shall be utterly and entirely abolished, and are hereby declared to be thenceforth, unauthorized and unlawful.

Persons selling or being concerned in selling Lottery Tickets, to be fined not less than \$500, nor more than \$1,000. One half to Prosecutor, the other half to County.

7. SEC. II. From and after the day aforesaid, any person or persons who shall sell or expose to sale, or cause to be sold or exposed to sale, or shall keep on hand for the purpose of sale, or shall advertise or cause to be advertised for sale, or shall aid or assist, or be, in any wise, concerned in the sale or exposure to sale, of any lottery ticket or tickets, or any share or part of any lottery ticket, in any lottery, or device in the nature of a lottery, within this State or elsewhere; and any person or persons who shall advertise or cause to be advertised, the drawing of any scheme in any lottery; or be, in any way, concerned in the managing, conducting, carrying on or drawing of any lottery, or device in the nature of a lottery; or be an agent in procuring or supplying lottery tickets, and shall be convicted thereof, in any court of competent jurisdiction, shall for each and every such offence, forfeit and pay a sum not less than five hundred dollars and not exceeding one thousand dollars, at the discretion of the court; one half to be paid to the prosecutor and the other [*half*] to be paid over to the county treasurer, for the use of the county where the offence may have been committed.

To what this act does not apply.

8. SEC. III. In all cases where the party shall be convicted, as aforesaid, and shall fail or refuse to comply with the provisions in the second section of this act, he, she or they shall be sentenced to undergo an imprisonment, in the common jail of the county, not exceeding six months, at the discretion of the court.

9. SEC. IV. All laws and parts of laws militating against this act, are hereby repealed: *Provided*, that this act shall not apply to any lottery heretofore authorized by the General-Assembly.

AN ACT to repeal all laws and parts of laws authorizing Lotteries in the State of Georgia, and for other purposes.—*Approved Dec. 11, 1858.*

After June, 1860, all Lottery laws repealed.

10. SEC. I. That from and after the first day of June, eighteen hundred and sixty, all laws and parts of laws authorizing lotteries in the State of Georgia, or the vending of lottery tickets in said State, be and the same are hereby repealed.



FIRE-WOOD.

AN ACT to prevent frauds and deceits in selling Beef, Pork, Pitch, Tar, Turpentine and Fire-Wood.—*Approved March 6, 1766.*—[There is no part of this statute that falls within our arrangement, except that relating to Fire-Wood.]

*Whereas*, the preventing frauds and deceits in the packing of Beef and Pork, and in selling Pitch, Tar, Turpentine and Fire-Wood, will greatly increase the credit and repute of those commodities of this Province, and also, be for the particular benefit and emolument of the purchasers, or exporters of the same—

1. SEC. IX. *Be it enacted*, That from and after the first day of February aforesaid, [1767,] every cord of fire-wood which shall be sold in this Province, shall measure eight feet in length, four feet in height and four feet in breadth. And in case any person or persons whatever, having any fire-wood sold and delivered them by the cord, as aforesaid, shall suspect a deficiency therein, every such person or persons shall and may apply to any of the packers and inspectors to be appointed, as aforesaid, to cord and measure the same; and in case any deficiency shall appear, the person or persons selling the same, shall for every cord that shall be so deficient, forfeit the sum of ten shillings. And the packer and inspector measuring the same, shall be paid the sum of sixpence, for every cord so measured, by the seller thereof, in case of deficiency; and in case no deficiency shall appear, then to be paid the sum of sixpence, by the person or persons applying.

Cord of Fire-Wood.

Persons cheating in Fire-W'd, to forfeit ten shillings.

Inspector's Fee, by whom paid.

COMPUTATION OF TIME.

AN ACT to alter the mode of Computing Time, in certain cases.—*Approved Dec. 28, 1838.*

1. SEC. I. That from and after the passage of this act, in all cases whatsoever, where time is required to be computed by the month, or by months, the computation shall be by the calendar month, and not by the lunar month: *Provided always*, that this act shall not affect rights or interests, accrued before its passage.

How 'Time is to be computed.

A CONVENTION TO BE CALLED.

AN ACT to authorize the Governor to call a Convention, upon certain contingencies therein specified.—*Approved Dec. 4, 1856.*

*Whereas*, in pursuance of an Act of the Legislature, approved February the 8th, 1850, in response to a Proclamation of the Governor of the State, a Convention assembled in the Capitol, at Milledgeville, on the 16th of December, 1850. *And whereas*, the said Convention, in view of threatened aggressions upon the constitutional rights of the slave-holding States, adopted, among others, the following Resolution—"That the State of Georgia, in the judgment of this Convention, will and ought to resist, (even as a last resort,) to the disruption of every tie which binds her to the Union, [1.] any act of Congress upon the subject of slavery in the District of Columbia, or in places subject to the jurisdiction of Congress, incompatible with the safety, domestic tranquillity, the rights and honor of the slave-holding States. [2.] Or any act suppressing the slave-trade, between the slave-holding States. [3.] Or any refusal to admit, as a slave State, any Territory, hereafter applying, because of the existence of slavery therein. [4.] Or any act prohibiting the introduction of slaves into the Territories of Utah and New-Mexico. [5.] Or any act repealing,



or materially modifying, the laws of force, for the recovery of Fugitive Slaves." *And whereas*, there is reason to apprehend the happening of some of these contingencies, and the State of Georgia is unalterably determined to adhere to the position solemnly announced in the said Resolution; therefore—

Governor to  
issue his Pro-  
clamation,  
ordering an  
election of  
Delegates.

1. SEC. I. *Be it enacted*, That within sixty days after the happening of any of the contingencies specified in the foregoing [*and before*] recited resolution, it is hereby made the duty of the governor, to issue his proclamation, ordering an election to be held in each and every county, for delegates, to a convention of the people of this State; to convene at the seat of government, within twenty days after said election, to consider and determine upon the time and mode of resistance contemplated by the aforesaid, [*and before*] recited, resolution.

Number of  
Delegates.

2. SEC. II. That each county in this State, shall elect as many delegates to said convention, as will be equal to the number of its senator and representative, or representatives, in the General-Assembly. And the elections for such delegates, shall be conducted in the same manner as elections for members of the legislature are now held. And that all returns of elections, shall be forwarded to the governor, who shall furnish each delegate elected, with a certificate of his election.

Elections,  
how held.  
Returns, how  
made.

\$20,000  
appropriated  
to defray ex-  
penses.

3. SEC. III. That the sum of twenty thousand dollars, be and the same is hereby appropriated (out of any money in the treasury, not otherwise appropriated,) to defray the expense of said convention; and that the members of said convention shall be entitled to such per diem and mileage, as that body shall determine.

Officers.

4. SEC. IV. That the said convention shall have power to elect all such officers as may be necessary for its organization.

### JUDICIARY ACT OF 1799.

Sup. Courts  
to be held  
twice a year.

AN ACT to amend an act entitled "an act to revise and amend the Judiciary system of this State." *Approved Feb. 16, 1799.*

Inf. Courts  
twice a year.

SEC. I. The superior courts shall be held in each county in the respective districts twice in every year, by one or more of the Judges of the superior courts. [The rest of this section superseded.]

SEC. II. The inferior courts shall be held twice in every year in each county, by the justices of the said inferior courts, or a majority of them. [The rest of this section superseded.]

### POWERS COMMON TO BOTH.

Jurisdiction  
of the Sup.  
and Inf. C'ts.

SEC. III. The said superior and inferior courts shall have full power and authority to hear and determine all causes, both civil and criminal, of which they shall severally have jurisdiction, according to the constitution and laws of this State, by a jury of twelve men, to be taken from the county, in such manner as shall herein-after be prescribed, according to the usages and customs of law.

Adjournm'ts.

SEC. IV. In case of unavoidable accidents, whereby the said superior court in any county shall not be held at the time for holding the same, it shall be the duty of the clerk of such court to adjourn the same from day to day, not exceeding two days; and if the said court should not sit within the two days as aforesaid, such clerk shall then adjourn the same to the next term.

Courts of  
Record.

SEC. V. The said superior and inferior courts shall be courts of record, and have power to administer oaths, and exercise all other necessary powers

appertaining to their jurisdictions respectively, according to law; and where any of the said courts shall fail to meet, the proceedings in such courts shall not thereby be discontinued, but shall stand continued over in the same manner as if such failure had not been; and all witnesses going to, attending on, and returning from any of the said courts, shall be free from arrest on any civil process. Witnesses free from arrest.

SEC. VI. The said courts shall have power on the trial of causes cognizable before them respectively, on ten days' notice, and proof thereof being previously given to the opposite party, or his, her, or their attorney, on motion to require either party to produce books and other writings, in his, her, or their possession, power or custody, which shall contain evidence pertinent to the cause in question, under circumstances where such party might be compelled to produce the same, by the ordinary rules of proceeding in equity; and if the plaintiff shall fail or refuse to comply with such order, it shall be lawful for the court on motion to give judgment against such plaintiff, as in case of non-suit; and if the defendant shall fail or refuse to comply therewith, the court on motion shall give judgment against such defendant as in case of judgment by default; and the said courts respectively shall have power and authority to establish copies of lost papers, deeds, or other writings, under such rules and precautions as are or may have been customary and according to law and equity. Courts may compel the production of books, papers, etc. on trial. And establish copies of lost papers.

SEC. VII. The judges of the superior courts, or any one of them, and the justices of the inferior courts or any of them, in the absence of the judges of the superior courts, shall have power to issue writs of habeas corpus; and in all cases to discharge, admit to bail, or remand to jail, any prisoner, according to their discretion and the law of the land: *Provided*, that in all cases of a capital nature where a writ of *habeas corpus* shall be issued by a justice of the inferior court, it shall be necessary that one or more of the justices of such inferior court shall associate with the justice granting the same, at the return thereof, and a majority of such justices shall concur in opinion on any decision or order aforesaid; and it shall be the duty of such justices to attend, on one day's notice being given of the time and place of the return of such writ. *Habeas Corpus.*

#### PROCESS.

SEC. VIII. All suits of a civil nature cognizable in the said courts respectively, shall be by petition to the court, which petition shall contain the plaintiff's charge, allegation or demand, plainly, fully and distinctly set forth, and be signed by the plaintiff, or his, her, or their attorney, and to which petition the clerk shall annex a process, signed by such clerk, and bear test in the name of one of the judges or justices of such court, directed to the sheriff, requiring the defendant or defendants to appear at the court to which the same shall be made returnable, and shall be served on the defendant or defendants at least twenty days before the return thereof, by delivering a copy of such petition and process to the defendant or defendants, or leaving such copy at his, her, or their most notorious place or places of residence. And if any such process shall be delivered to the sheriff or other officer, whose duty it shall be to execute the same, so late that it cannot be served in manner aforesaid, twenty days before the sitting of the court to which it shall be returnable, such process shall not be executed, but the officer shall return the same, with the truth of the case. And if any original civil process shall be taken out within twenty days of the next court, the same shall be made returnable to the next court to be held after the expiration of the said twenty days, and not otherwise. And all process issued and returned in any other manner than Petition and process to be served 17 days before Court.



that hereinbefore directed, shall be, and the same is hereby declared to be null and void.

By whom is-  
sued and to  
whom di-  
rected.

Answer or  
defence.

SEC. IX. All process issued by the clerks of the said courts respectively, where the sheriff who ought to execute the same, shall be any wise interested, shall be directed to the coroner of such county, and served and returned by him in the same manner as is required of sheriffs. And for the more orderly and regular proceeding in the said courts, the following rules and methods shall be observed, to wit: The defendant or defendants shall appear at the court to which the petition and process shall be returnable, and on or before the last day of the said court shall make his, her or their defence or answer in writing, which shall plainly, fully, and distinctly set forth the cause of his defence, and be signed by the party making the same, or his, her, or their attorney; which said answer may contain as many several matters, as such defendant or defendants may think necessary for his, her, or their defence.

Bonds, notes,  
etc. to be  
denied on  
oath.

*Provided*, that no person shall be permitted to deny any deed, bond, bill, single or penal note, draft, receipt, or order, unless he, she, or they shall make affidavit of the truth of such answer at the time of filing the same. And the said petition and answer shall be sufficient to carry the same to the jury,

Proceedings  
not to abate  
for defect in  
form, but  
amendable at  
1st term.

without any replication or other course of proceedings: And no petition, answer, return, process, judgment or other proceeding in any civil cause, shall be abated, arrested, quashed or reversed, for any defect in matter of form, or for any clerical mistake or omission, not affecting the real merits of the cause; but the court, on motion, shall cause the same to be amended without any additional cost at the first term, and shall proceed to give judgment according

Dilatory an-  
swers to be on  
oath.

to the right of the cause and matter of law, as it shall appear to the said court, without regard to such imperfections, in matter of form, clerical mistake or omission; and no dilatory answer shall be received or admitted, unless affidavit be made of the truth thereof.

Judgment by  
default.

SEC. X. Where any defendant shall fail to appear and answer in manner aforesaid, the court, on motion of the plaintiff or his counsel, shall enter a judgment by default, and the plaintiff's claim, allegation or demand, shall be

Continuance.

any case be had at the first term; and no cause whatever depending in the said courts shall be continued more than one term, at the instance of the same party.

Actions  
against joint-  
obligors or  
promissors re-  
siding in dif-  
ferent  
Counties.

SEC. XI. In all cases where a suit shall be instituted in any of the said courts on any bond, note, or other written obligation subscribed by several persons, who reside in different counties, the plaintiff shall have his option to institute his suit in either of the said counties, and the clerk shall issue the original petition and process, and a copy or copies in such county, against the defendant or defendants who may reside therein, in manner directed by this act; and shall also issue another original, and copy or copies thereof for the defendant or defendants, resident in other county or counties; and it shall be the duty of the plaintiff, his agent, or attorney, to cause such original and copies to be delivered to the sheriff or other officer in such other county or counties, who shall execute and return the same to the court from whence they issued, in such manner as is herein-before directed, and on such return the plaintiff may proceed as in other cases.

#### EXECUTORS AND ADMINISTRATORS.

Ex. and Ad.  
exempt from  
suit 12  
months.

SEC. XII. No suit or action shall be issued against any executor or administrator for any matter or cause against the testator or intestate of such executor or administrator in any of the said courts, until the expiration of twelve months after probate of the will of such testator, or letters of administration, granted on the estate of such intestate.



And no suit in any of the said courts shall abate by the death of either party, where such cause of action would in any case survive to the executor or administrator, whether such cause of action would survive in the same, or any other form, but the same shall proceed as if such testator or intestate had not died, under the restrictions and regulations following: When a plaintiff shall die, in any case aforesaid, the executor or administrator of such plaintiff shall, within three months after taking out probate of the will, or letters of administration, give notice to the defendant or defendants by *scire facias*, to issue out of the clerk's office, returnable in the manner herein-before prescribed for the issuing and return of process; and in cases where the defendant shall die, it shall and may be lawful for the plaintiff to issue a *scire facias* in manner aforesaid, immediately after the expiration of twelve months, requiring such executor or administrator to appear and answer to the said cause.

Suits shall not abate by death of parties if the cause of action survives.

*Scire facias.*

And where a *feme sole*, being plaintiff, shall marry pending any suit, the same shall not abate by reason of such intermarriage, but the same being suggested on the record, such cause shall proceed in the name of the husband and wife.

*Feme sole.*

#### BAIL.

SEC. XIII. In all cases where bail is requirable, and the plaintiff in any action shall require bail, such plaintiff shall make affidavit before any Judge, Justice of the Inferior Court, or Justice of the Peace within this State, or any Judge or Justice of a Superior Court of any of the United States, shall have annexed thereto the seal of the State from whence it shall come, and a certificate of the Governor certifying that the person taking such affidavit is one of the Judges or Justices of a Superior Court of that State, of the amount claimed by him, and that he has reason to apprehend the loss of the said sum, or some part thereof, if the defendant or defendants is or are not held to bail, which affidavit shall be filed in the Clerk's office, and copies thereof affixed to the original petition and process, and to the copy or copies thereof, and the amount sworn to shall be endorsed on the petition and process.

Plaintiff shall make oath of the amount due, and that he expects to lose the same unless bail is taken.

To be endorsed.

SEC. XIV. When any civil process shall issue out of any of the said Courts, whereby bail shall be required to be taken in manner aforesaid of any person or persons to answer any action in any of the said Courts, the Sheriff or other officer shall take a bond, with one or more sufficient security or securities, for double the sum sworn to, and shall return such bond, with the petition and process: And in case the Sheriff or other officer shall fail or neglect to take such bail, or the bail taken shall be deemed insufficient by the Court, on exceptions taken thereto, and entry thereof made at the first term to which the said petition and process shall be returned, such Sheriff or other officer, and his or their security or securities, in either of the said cases, shall be deemed and stand as a special bail, and the plaintiff may proceed to judgment according to the provisions of the Act herein-after mentioned. And in all cases where any defendant or defendants, of whom bail shall be required, shall refuse to give good and sufficient bail, it shall be the duty of such Sheriff or other officer to commit such defendant or defendants to the common jail of the County, or if there should be no jail in the County, or the same shall be insufficient, it shall and may be lawful for the said Sheriff or other officer to confine such defendant or defendants in some private house: *Nevertheless*, such person or persons shall be allowed all the benefits of appearance and defence, as if he, she, or they were personally present, and shall not be discharged out of custody, but by putting in bail, or by order of Court.

Sheriff's duty with regard to bail.

Shall be bail himself, if he neglects to take bail, or takes insufficient bail.

SEC. XV. All bail taken according to the directions of this Act, shall be deemed held, and taken as special bail, and as such be liable to the recovery

Proceedings against bail.



*Ca. fa.*  
*Sci. fa.*

of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against such bail, until a *capias ad satisfaciendum* shall be first issued thereon, and the principal cannot be found, and shall also issue a *scire facias* returnable to the said Court, which shall be served on the bail at least twenty days before the return thereof; and after the return of such *capias ad satisfaciendum* against the principal, and *scire facias* against the bail, and judgment thereon, execution may issue against the principal and bail, or either of them, or either of their estates, unless the bail shall surrender the principal at or before entering up final judgment on the *scire facias*, either in open Court in term-time, or to the Sheriff of the County in which such principal shall reside, at any time in vacation: And it shall be the duty of the Court to order such principal into the custody of the Sheriff, and the duty of the Sheriff in time of vacation to receive into his custody such principal, and in either case to commit him, her, or them to jail, according to the directions of this Act, any law, usage, or custom to the contrary notwithstanding.

SEC. XVII. [Directing the proceedings on *sci. fa.* against bail, repealed by act of 1801.]

#### MORTGAGES ON REAL ESTATE.

Foreclosure  
of mortgages  
on real estate.

SEC. XVII. The method of foreclosing mortgages on real estate, in this State, be as follows: Any person applying, and entitled to foreclose such mortgage, or his, her or their attorney, shall petition the Superior Court of the County wherein such mortgaged property may be, stating the case, and the amount of his, her, or their demand, and describing such mortgaged property; and the Court shall grant a rule, that the principal, interest and cost shall be paid into Court, within twelve months thereafter, which rule shall be published in one of the public gazettes of this State at least once in every month, until the time appointed for payment, or served on the mortgager, or his special agent, at least six months previous to the time the money is directed to be paid; and unless the principal, interest, and costs be so paid, the Court shall give judgment for the amount which may be due on such mortgage, and order the property mortgaged to be sold in such manner as is prescribed in cases of execution, and the money shall be paid to the mortgagee or his attorney; but where there shall be any surplus, the same shall be paid over to the mortgager or his agent. And in case of any dispute as to the amount due on any mortgage, if the mortgager shall appear within the time prescribed by this Act, and make affidavit that he hath made payments which have not been credited on the said mortgage, or that he is entitled to sets-off which in equity ought to be allowed, the Court shall appoint one or more fit person or persons to audit and liquidate the same; but either party shall be entitled to a new trial therefrom, which shall be tried in like manner as shall be prescribed for the trial of appeals in other cases.

#### MORTGAGES OF PERSONAL PROPERTY.

On personal  
property.

SEC. XVIII. Mortgages of personal property shall be foreclosed in the following manner: Any person or persons holding a mortgage on personal property, and wishing to foreclose the same, shall make application to one of the Judges of the Superior or Justices of the Inferior Courts, and make affidavit before him of the amount of principal and interest due on such mortgage, which affidavit shall be annexed to such mortgage, and thereupon the Clerk of the Superior or Inferior Courts shall issue execution as on a judgment, which execution being delivered to the Sheriff, it shall be his duty to levy on the property wheresoever the same may be found, and after advertising the same in one or more of the public gazettes of this State at least sixty days, the Sheriff shall set up and expose the same to sale, and the money arising from such sale shall



be first applied to discharge the amount due on such mortgage, and all legal costs, and the overplus, if any, to be paid to the mortgager: *Provided always*, that if any dispute shall happen as to the sum due on any mortgage, that it shall and may be lawful for the said Judge or Justices of the Inferior Courts, on affidavit, to order such sale to be postponed, the mortgager giving bond, with good and sufficient security, in double the sum sworn to be due, for returning such property when called for by the Sheriff, which bond shall be assignable by the Sheriff to the mortgagee, who may sue and recover thereon; but the Jury shall be sworn to give at least twenty-five per cent. damages, in case it shall appear that such application was intended for delay only.

## WITNESSES.

SEC. XIX. Where the attendance of any person shall be required as a witness, in any of the Courts aforesaid, in any cause depending therein, it shall be the duty of the Clerks of the said Courts respectively, on application, to issue writs of subpoena directed to the persons whose attendance shall be required, where such persons reside within the County, in which such cause may be depending, which writ of subpoena shall express the cause, and the party at whose suit it shall be issued, and shall be served on such witnesses at least five days before the Court to which it shall be returnable; and which writ shall be served by a Sheriff, Constable, or some private person, and the return of a Sheriff, or Constable of such service, or the affidavit of any private person, shall be sufficient evidence that such subpoena was duly executed.

Witnesses.

Subpoena 5 days before.

SEC. XX. Where it shall appear in manner aforesaid, that a witness in any cause shall have been duly summoned, and such witness shall fail to appear, it shall be the duty of the Court, on motion, to issue an attachment against such defaulting witness, returnable to the next Court, and shall fine such witness in a sum not exceeding three hundred dollars, unless he or she shall make a sufficient excuse for such non-attendance, which shall be judged of by the Court; but shall nevertheless be subject to the action of the person at whose suit such witness shall have been summoned, for any damage which he, she or they may have sustained, by reason of such non-attendance.

Attachment for non-attendance,

and liable to damages.

SEC. XXI. When a subpoena shall be served on any witness, in conformity to this Act, it shall be the duty of such person so summoned to attend, from time to time, until the cause in which such witness shall have been summoned is tried, or be otherwise discharged by the Court.

Must attend till discharged.

SEC. XXII. On the last day of the attendance of any witness in each term, it shall and may be lawful, on application of such witness, to exhibit his account for attendance, against the person or persons at whose suit he or they may have been summoned, and the Judge or presiding Justice shall examine and certify the same under his hand, which shall be countersigned by the Clerk, whereupon such account so certified, shall have the force and effect of an execution, and may be levied by the Sheriff or Constable, according to the amount thereof, off the goods and chattels of such party, in like manner as in cases of other executions. *Provided nevertheless*, that where any witness shall claim, and levy for more than is really due, such witness shall forfeit and pay to the party injured four times the amount of the sum so unjustly claimed. And no party cast in any suit shall be taxed for more than the cost of two witnesses to any material point in any cause, which shall be specially certified by the Court trying the same; nor shall any party be allowed to tax costs for different witnesses to different material points, where the same witnesses shall be sufficient, in the opinion of the Court, to prove such material points.

Their fees and mode of payment.

Two witnesses to every material point.

SEC. XXIII. Where any witness resides out of the State, or out of any County in which his testimony may be required in any cause, it shall be lawful for either party, on giving at least ten days' notice to the adverse

Interrogatories may issue where witness



resides out of party, or his, her or their attorney, accompanied with a copy of the inter-rogatories intended to be exhibited, to obtain a commission from the Clerk of the Court in which the same may be required, directed to certain commissioners, to examine all and every such witness or witnesses, on such interrogatories as the parties may exhibit; and such examination shall be read at the trial on motion of either party.

## SETS-OFF AND SPECIALTIES.

Sets off.

SEC. XXIV. In all cases of mutual debts and sets-off, where the Jury shall find a balance for the defendant, such defendant may and shall enter up judgment for the amount, and take out execution in such manner as plaintiffs may do by this Act: *Provided*, such defendant shall at the time of filing his answer, also file therewith a true copy or copies of the subject matter of such sets-off; and where the plaintiff shall be indebted to the defendant on open account for dealings between themselves, and where the defendant shall hold and possess in his own right, by assignment, endorsement, or otherwise according to law, any bond, note, bill, or other writing, for money, or other thing of the said plaintiffs, such defendant shall and may offer the same as sets-off, and on due proofs shall be allowed the same.

Bonds, notes,  
&c., of equal  
dignity, and  
negotiable.

SEC. XXV. All bonds and other specialties, and promissory notes, and other liquidated demands, bearing date since the 9th day of June, 1791, whether for money, or other thing, shall be of equal dignity, and be negotiable by endorsement, in such manner and under such restrictions as are prescribed in the case of promissory notes. *Provided*, that nothing herein contained shall prevent the party giving any bond, note, or other writing, from restraining the negotiability thereof, by expressing in the body thereof such intention.

## VERDICTS AND JUDGMENTS.

Verdicts and  
judgments.

SEC. XXVI. In all cases where a verdict shall be rendered, the party in whose favor it may be, shall be allowed to enter and sign judgment thereon at any time within four days after the adjournment of the Court, at the Clerk's office, for the amount of such verdict and all legal costs recoverable thereon, and no execution shall issue on any verdict until such judgment shall be entered, signed by the party or his attorney; and all the property of the party against whom such verdict shall be entered, shall be bound from the signing of the first judgment; but where several judgments shall be of equal date, the first execution delivered to the Sheriff shall be the first satisfied: *Provided always*, that any party against whom such judgment shall be entered, may enter good and sufficient security, either in open Court or in the Clerk's office, within the time aforesaid, for the payment of the judgment and costs within sixty days; and if such party shall not pay the same agreeably thereto, execution may issue against such party, and the security, without any other proceeding thereon: *And provided also*, that in case either party shall be dissatisfied with the verdict of the Jury, then, and in all such cases, either party may, within four days after the adjournment of the Court in which such verdict was obtained, enter an appeal in the Clerk's office of such Court (as matter of right;) and if such verdict shall be obtained in the Inferior Court, it shall be the duty of the Clerk thereof to transmit such appeal to the clerk of the Superior Court of the County in which such verdict shall be obtained, who shall enter the same on the appeal docket, which appeal shall be admitted

stay of execu-  
tion.

Appeal.



and tried by a special Jury. *Provided*, the person or persons so appealing shall, previous to obtaining such appeal, pay all costs which may have arisen on the former trial, and give security for the eventual condemnation money, except executors and administrators, who shall not be liable to give such security; but if, on hearing such appeal, it shall appear to the Jury that the appeal was frivolous, and intended for delay only, they shall assess damage to the party aggrieved by such delay, not exceeding twenty-five per centum on the principal sum which they shall find due; and such damages as shall be so assessed, shall be specially noted in the verdicts of such Jurors, and no person shall be allowed to withdraw an appeal after it shall be entered but by the consent of the parties. And in case of a Jury committing a contempt, or breaking up before giving in their verdict in any civil case, the Court may declare the same a mis-trial, and shall fine each of the offending Juror or Jurors in a sum not exceeding one hundred dollars. And if any party, plaintiff or defendant, be hereafter non-suited or cast, by reason of the neglect or misconduct of the attorney who shall hereafter bring or be employed in such suit, in all cases the said attorney shall pay all costs that may accrue thereby, and the Court shall immediately enter up judgment accordingly for the same.

Upon payment of costs and entering security.

25 per cent. damages may be given for frivolous appeals.

Mis-trial. Attorney liable for costs in certain cases.

SEC. XXVII. No confession of judgment shall hereafter be entered up, but in the County where the defendant or defendants may reside, or unless the cause hath been regularly sued out and docketed in the usual way as in other cases, nor until such cause be called in order by the Court for trial.

Confession of judgment.

SEC. XXVIII. No verdict shall be received on any unliquidated demand where the Jury have increased their verdict on account of interest. nor shall interest be given on any open account, in the nature of damages,

No interest on unliquidated demands.

SEC. XXIX. [Superseded.]

#### ARBITRATION.

SEC. XXX. In all matters submitted to reference by parties, in a suit under a rule of Court or other agreement in writing signed by the parties, judgment shall be entered up by the party, in whose favor the award is given, and execution shall issue for the sums awarded, to be paid as they respectively become due, and to be levied on the property of the party against whom the judgment shall have been entered up, and such other proceedings shall be had thereon by the Court, as in cases of judgments entered upon verdicts of Juries: *Provided*, that no judgment shall be entered upon an award, where it shall appear any other cause or causes stand on the docket of the Court against the defendant or defendants, undetermined, before the cause in which a rule or other agreement in writing for arbitration is entered.

Arbitration.

#### EXECUTIONS.

SEC. XXXI. [Respecting executions—superseded.]

SEC. XXXII. In all cases where execution shall issue illegally, and the person against whom such execution may be shall make oath thereof and shall state the causes of such illegality, such Sheriff shall return the same to the next term of the Court out of which the same issued, which Court shall determine thereon, at such term. [*The residue of this section relates to claims, and is superseded.*]

Illegality in executions.

SEC. XXXIII. No sales in future shall be made by Sheriffs of property taken under execution, but on the first Tuesday in each month, and between the hours of ten and three in the day; and it shall be the duty of the Sheriffs to give thirty days' notice in one of the public gazettes of the

Sales by execution. Hours of sale



State, of all sales of lands and other property executed by him, and also advertise the same in three of the most public places in the County where such sales are to be made, and shall give a full and complete description of the property to be sold, making known the name of the defendant, and the person who may be in possession of the property, except horses, hogs and cattle, which may be sold at any time by the consent of the defendant; and in which case it shall be his duty to give the plaintiff ten days' notice thereof, and also to advertise the same in three or more of the most public places in the County where such property may be, at least ten days before the sale.

Sale of live  
stock.

## CLERKS.

Clerk's duty.

SEC. XXXIV. The Clerks of the several Courts in this State shall copy into a book of record, all the proceedings in all civil cases in the said Courts, respectively, which entry of record shall be made within forty days after the determination of any cause; and the said Clerks shall be allowed the sum of ten cents for every hundred words of recording such proceeding, to be taxed in the bill of cost. And the said Clerks shall also keep regular and fair minutes of all the proceedings in any of the said Courts, which shall be signed by the Judge of the Superior, or presiding Justices of the Inferior Courts, (as the case may be,) prior to the adjournment from day to day.

Must be  
sworn, and  
give bond and  
security.

The oath.

May admin-  
ister oaths  
appertaining  
to their offi-  
cial business.

Not to act as  
attorney.

May be Clerk  
of both C'ts.

SEC. XXXV. The Clerks of the said Superior and Inferior Courts, hereafter to be appointed, shall, before they enter upon the duties of their appointments, and after being commissioned by the Governor, take the following oath before one of the Judges of the Superior Courts, or a Justice of the Inferior Court of the County: "I do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments, and other proceedings of the Superior (or Inferior) Court of the County of —, and all other matters and things which by law ought by me to be recorded, and that I will faithfully and impartially discharge and perform all the duties required of me, to the best of my understanding." And shall also enter into bond with one or more good and sufficient security or securities, to the Governor for the time being, in the sum of \$3,000, conditioned for the faithful discharge of the duties required of them: And the said Clerks shall in virtue of their offices be Justices of the Peace, so far as to administer all oaths appertaining to the business of their office.

SEC. XXXVI. No Clerk of a Court or other person employed in his office, shall act as attorney in his own name, or the name of any other person, or be allowed to plead or practise in such Courts, during the time he shall be employed in such office: And the same person may be Clerk of the Superior and Inferior Courts of the same County: *Provided*, that nothing herein contained shall extend to prevent any officer of the Court from prosecuting or defending any suit to which he is a party.

## LAW DEPARTMENT.

Duty of solic-  
itor and at-  
torney-gen.

In case of  
their absence  
the Court may  
appoint.

SEC. XXXVII. It shall be the duty of the State's Attorney and Solicitors, or one of them, to prosecute all delinquents for crimes and other offences, cognizable by the said Courts, and all civil actions in which this State shall be concerned, and to give advice or opinion in writing, to his Excellency the Governor, in questions of law in which the State may be interested. And in case it should so happen, that neither the State's Attorney or Solicitors, or either of them, can attend the said Courts, then the



Judge presiding may, and he is hereby authorized and required, to appoint some attorney-at-law to prepare and prosecute the indictments and other business of the State; and such person so appointed shall be entitled to the same fees and emoluments therein, as the State's Attorney or Solicitors would have been entitled to.

## JURIES.

SEC. XXXVIII. All free male white citizens above the age of twenty-one years, and under sixty years, are declared to be qualified and liable to serve as Petit Jurors for the trial of all civil causes for recovery of debts or damages, to any amount whatsoever; but no person shall be capable to be of a Jury for the trial of treason, felony, breach of the peace, or any other cause of a criminal nature, or of any estate of freehold, or of the right or title to any lands or tenements, in any Court of Record within this State, who shall not be qualified to vote at elections for members of the Legislature; and if any person not qualified as aforesaid, shall be returned on any Jury, he shall be discharged on the challenge and proof thereof, of either of the parties to such suit, or on his own oath, of the truth thereof: *Provided*, that no exception against any Juror, on account of his qualification, shall be allowed after he is sworn. Their qualifications.

SECS. XXXIX. and XL. [Directing the mode of selecting and drawing Juries, superseded.]

SEC. XLI. No Grand Jury shall consist of less than eighteen or more than twenty-three, but twelve may find a bill or make a presentment. [The rest of this section superseded.] Grand Jury not less than 18, nor more.

SEC. XLII. The Clerk of the Court shall annex a pannel of the Jury, containing the names of the persons drawn to serve on the Grand Inquest, exactly transcribed from the minute-book to the precept for summoning such Grand Jury; and shall also annex another pannel containing the names of the persons drawn as Petit Jurors for the trial of civil and criminal cases, exactly transcribed as aforesaid, to the precept for summoning the Petit Jurors, in the mandatory part of which precept shall be written the words following, viz: "The several persons named in the pannel hereunto annexed; which precept, with the several pannels annexed, as aforesaid, shall be delivered by the Clerk of the Court within three days after the drawing of such Juries as aforesaid, to the Sheriff of the County or his deputy." Precept to issue.

SEC. XLIII. The Sheriff or his lawful deputy, for the time being, upon the receipt of any precept for summoning Grand or Petit Jurors, shall cause the several persons whose names are written in the pannel thereunto annexed, to be served with a summons, at least ten days before the sitting of the Court for which they are drawn and impannelled; which summons shall be in the following words, or words to that effect: "By virtue of the precept to me directed, you are hereby commanded to appear before the Judge of the Superior Court, at the next Superior Court, to be held at the Court-house in and for the County of ———, on the ——— day of ———, at ten o'clock in the forenoon of that day, to be sworn on the Grand Jury (or as a Juror for the trial of civil and criminal causes then and there depending, as the case may be:)" which shall be signed by the Sheriff or his lawful Deputy for the time being; which Sheriff or lawful Deputy aforesaid, shall make return of all such precepts, in each of which he shall set forth the names of all such persons as shall have been summoned by virtue of such writs or precepts, and the time when they were summoned, and also the names of the persons whom he may not have summoned, together with the reasons why they were not summoned, on pain of being fined by the Court. Juries to be summoned 10 days before Court.  
  
Form of the summons.



Defaulting  
Jurors may be  
fined.

SEC. XLIV. The Clerk of the Court shall make due entry in the minute-book of such Court of the appearance of all Jurors, and shall likewise enter and make report of the names of all such as shall make default in appearing; that if any person who shall be drawn, impanelled, summoned and returned to serve as Jurors at any Court as aforesaid, shall neglect or refuse to appear, or after appearance shall refuse to serve, or shall absent himself without leave of the Court, then and in that case, it shall be lawful for the Court to fine such person, if a Petit Juror, in a sum not exceeding twenty dollars, and if a Grand Juror, in a sum not exceeding forty dollars, unless such Juror shall show good and sufficient cause of excuse, to be made on oath before any Justice of the Peace, and filed in the Clerk's office of such Court, within thirty days after opening the said Court; the merits of which excuse shall be determined by the next succeeding Court; and when from challenge or otherwise there shall not be sufficient number of Jurors to determine any civil or criminal cause, the Court may order the Sheriff or his Deputy, to summon by-standers or others, qualified as herein-before required, for the trial of such cause or causes, sufficient to complete the pannel; and when the Sheriff or his Deputy are disqualified from acting in the manner herein expressed, Jurors shall be summoned by the Coroner, or such other disinterested person as the Court may appoint.

If a petit  
Juror, \$20;  
if a Grand  
Juror, \$40.

Talesmen.

Oath of petit  
Jurors.

SEC. XLV. The oath to be administered to Petit Jurors in civil cases shall be in the form following: "You (A B,) shall well and truly try the cause depending between the parties at variance, and a true verdict give according to evidence—so help you God."

#### SHERIFFS.

Sheriffs, their  
duty.

SEC. XLVI. The Sheriffs of the several Counties shall attend the Superior and Inferior Courts in the respective Counties when sitting, and by themselves or Deputies, execute throughout the Counties all writs, warrants, precepts and processes directed to them, issued under the authority of any Judge or Justice of the said Superior or Inferior Courts, or the Clerk of either of the Courts; and the said Sheriffs or their Deputies shall have power to command all necessary assistance in the execution of their duty, and to appoint, as there shall be occasion, one or more Deputies; and before any Sheriff shall enter upon the duty of his appointment, and being commissioned by the Governor, he shall be bound for the faithful performance of his duty, by himself and his Deputies, before any one of the said Judges, to the Governor of the State for the time being, and to his successors in office, jointly and severally, with two good and sufficient securities, inhabitants and freeholders of the County, to be approved of by the Justices of the Inferior Court, or any three of them, in the sum of \$20,000, and the said bond shall remain in the office of the Clerk of the Superior Court of such County, and may be sued for by order of the said Court, for the satisfaction of the public or persons aggrieved by the misconduct of the Sheriff or his Deputy; and the said Sheriff shall take and subscribe the following oath, before one of the Judges of the Superior or Justices of the Inferior Courts, and the same shall be entered on the minutes of the said Court, before such Sheriff shall enter on the duties of his office, to wit: "I do solemnly swear (or affirm as the case may be) that I will faithfully execute all writs, warrants, precepts and processes directed to me as Sheriff of the County of ———, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of Sheriff of ———, during my continuance in office, and take only my lawful fees—so help me God." And an oath to the same pur-

Must give  
security.

Their oath.



port shall be taken by each of the Deputies of the said Sheriff in like manner.

SEC. XLVII. In case of the death of either of the said Sheriffs, the Deputy or Deputies shall continue in office, unless otherwise specially removed, and execute the same in the name of the deceased, until another Sheriff be appointed and qualified; and the defaults and misfeasance in office of such Deputy or Deputies in the mean time, as well before as after the death of such Sheriff, shall be adjudged a breach of the condition of the bond given as before directed, by the Sheriff who appointed such Deputy or Deputies; and the executor or administrator of the deceased Sheriff, shall have the like remedy for the misconduct, or misfeasance, or default in office of such Deputy or Deputies, during such intervals, as he would be entitled to if the Sheriff had continued in life, and in the execution of his office, until his successor was appointed and sworn.

Liable for the conduct of their deputies.

SEC. XLVIII. The Sheriff of each County shall, at the expiration of his appointment, turn over to the succeeding Sheriffs, by indenture and schedule, all such writs and processes as shall remain in his hands unexecuted, who shall duly execute and return the same; and in case any Sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such Sheriff so neglecting or refusing, shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they shall sustain by reason of such neglect or refusal; and every Sheriff, at the expiration of such his appointment, shall also deliver up to his successor the custody of the jail, and the bodies of such persons as shall be confined therein, with the precepts, writs or causes of such detention; and such succeeding Sheriff shall be empowered and required to sell and carry into effect any levy made by his predecessors in office, in like manner as such Sheriff could have done, had he continued therein, and shall make titles to the purchasers for all the property sold under execution, and not conveyed by his predecessor.

Shall turn over to their successors all unfinished business, who shall complete the same.

SEC. XLIX. The Sheriffs of the several Counties in this State shall have like powers and authorities, and they, and their under Sheriffs, Jailers, Constables and other officers belonging to the Court, be liable to all actions, suits, penalties and disabilities whatsoever, which they or either of them may incur for or on account of the escape of prisoners, or for or in respect of any other matter or thing whatsoever, relating to or concerning their respective offices, in the same manner as they have heretofore been liable by laws in force in this State; and no Sheriffs, under Sheriffs, Deputy or other Sheriff's officer shall act as an attorney-at-law, in his own name or in the name of any other person, or be allowed to plead or practise in any of the Courts of this State, during the time he is in such office.

Sheriffs in what cases liable.

Shall not act as attorney.

SEC. L. The Sheriff shall be liable either to an action on the case, or an attachment for contempt of Court, at the option of the party, wherever it shall appear that he hath injured such party, either by false returns, or by neglecting to arrest the defendant, or to levy on his property, or to pay over to the plaintiff or his attorney the amount of any sales which shall be made under or by virtue of any execution, or any moneys collected by virtue thereof.

Are subject to attachment or to action.

SEC. LI. If any sheriff, or his deputy or under sheriffs, shall be guilty of extortion or other malpractice in the execution of his office, upon complaint made on oath to the State's attorney or solicitor, it shall be the duty of such attorney or solicitor to exhibit a bill of indictment against the person so offending, who, upon conviction thereof, shall be fined by the court in treble the amount which he may have extorted from any person, which shall be applied,

And liable to indictment for malpractice.



one moiety to the injured person, and the other moiety to the use of such county, and shall likewise be removed from office, and suffer such other punishments as the law directs.

In what cases liable for an action or attachment, and removable from office. SEC. LII. Whenever the sheriff of any county within this State shall fail to make proper return of all writs, executions and other process put into his hands, or shall fail or neglect to pay up all moneys received on such executions, on his being required by the court so to do, he shall be liable to an action as for contempt, and may be fined, imprisoned or removed from office, in the manner prescribed by the constitution.

#### SPECIAL POWERS OF SUPERIOR COURTS.

Equitable powers of the Sup'r Court. SEC. LIII. The superior courts in the several counties shall exercise the powers of a court of equity, in all cases where a common law remedy is not adequate to compel parties in any cause to discover on oath all requisite points necessary to the investigation of truth and justice, to discover transactions between co-partners and co-executors, to compel distribution of intestate estates, and payment of legacies, to discover fraudulent transactions for the benefit of creditors, and the proceedings in all such cases shall be by bill, and such other proceedings as are usual in such cases, until the sitting down of the cause for trial; and the courts shall order the proceedings in such manner as that the same shall be ready for trial at furthest at the third term from the filing such bill inclusive, unless very special cause be shown to induce the court to continue the same, which shall not extend to more than four terms; and all such bills shall be read and sanctioned by one of the judges, and a copy thereof served on the opposite party at least thirty days before the filing of such bill in court; and the party against whom such bill shall be filed, shall appear and answer to the same at the next court; and if he, she or they, shall fail to do so, the facts in the said bill shall be taken *pro confesso*, and the court may proceed to decree as to justice shall appertain.

When causes to stand for trial. Bills, how served. Answer *pro confesso*. Exceptions carried before Sup. Court by *certiorari*. SEC. LIV. Where either party in any cause in any inferior court shall take exceptions to any proceedings in any case affecting the real merits of such cause, the party making the same shall offer such exceptions in writing, which shall be signed by himself or his attorney; and if the same shall be overruled by the court, it shall and may be lawful for such party, on giving twenty days' notice to the opposite party or his attorney, to apply to one of the judges of the superior court, and if such judge shall deem the said exceptions to be sufficient, he shall forthwith issue a writ of *certiorari*, directed to the clerk of such inferior court, requiring him to certify and send up to the next superior court, to be held in the said county, all the proceedings in the said cause, and at the term of the superior court to which such proceedings shall be certified, the said superior court shall determine thereon, and order the proceedings to be dismissed, or return the same to the said inferior court, with order to proceed in the said cause.

Shall correct errors and grant new trials. SEC. LV. The said superior courts shall have power to correct errors, and grant new trials, in any cause depending in any of the said superior courts, in such manner and under such rules and regulations as they may establish, and according to law, and the usages and customs of courts.

SEC. LVI. [Oath of the special jury repealed.]

New trials. SEC. LVII. In any case which has arisen since the signing of the present constitution, or which may hereafter arise, of a verdict of a special jury being given contrary to evidence and the principles of justice and equity, it shall and may be lawful for the judge presiding to grant a new trial before another special jury, in the manner prescribed by this act: *Provided*, that twenty days' notice be given by the party applying for such new trial, to the adverse party of his intention, and the grounds of his application. And the said judge shall in

20 days' notice.

all cases of application for new trials, or correction of errors, enter his opinion on the minutes of the court for his determination on each respective case.

SEC. LVIII. All new trials shall be had by a special jury, to be taken from the grand-jury list of the county. Before a special Jury.

SEC. LIX. [The first part of this section, directing the annual convention of the judges, repealed.] And the said judges, or any of them, shall have power to perpetuate testimony on such terms and in such manner as is usually practised in courts of equity. Judges may perpetuate testimony.

SEC. LX. [Judges shall alternate, superseded.]

SEC. LXI. The act entitled "an act to revise and amend the judiciary system of this State," passed at Louisville, on 9th February, 1797, from the first to the 67th clause inclusive be, and the same is hereby repealed, [saving in favor of suits already commenced.] Repealing clause.

No justice of the peace shall sustain or try any satisfaction in damages for any trespass on the person or property of such plaintiff.



# APPENDIX.

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## NATURALIZATION LAWS.

ART. 1. Any Alien, being a free white person, may be admitted to become a Citizen of the United States, or any of them, on the following conditions, and not otherwise—

That he shall have Declared, on oath, or affirmation, before the Supreme, Superior, District or Circuit Court, of some one of the States, or of the Territorial Districts of the United States, or a Circuit or District Court of the United States, or before the Clerk of either of such Courts, two years, at least, before his admission, that it was *bonâ fide* his intention to become a Citizen of the United States, and to renounce for ever, all Allegiance and Fidelity, to any foreign Prince, Potentate, State, or Sovereignty whatever, and particularly, by name, the Prince, Potentate, State, or Sovereignty, whereof such Alien may, at the time, be a Citizen or Subject.

ART. 2. An Alien shall, at the time of his Application to be admitted, Declare on oath or affirmation, before some one of the Courts aforesaid, that he will support the Constitution of the United States, and that he doth, absolutely and entirely, renounce and abjure, all Allegiance and Fidelity, to every foreign Prince, Potentate, State, or Sovereignty, whatever, and particularly, by name, the Prince, Potentate, State, or Sovereignty, whereof he was a Citizen or Subject. Which proceedings shall be recorded by the Clerk of the Court.

ART. 3. The Court admitting such Alien, shall be satisfied that he has resided within the United States five years, at least, and within the State or Territory where such Court is at the time held, one year, at least. And it shall further appear to their satisfaction, that during that time, he has behaved as a man of good Moral Character; attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The Oath of the Applicant, shall in no case, be allowed to prove his residence.

ART. 4. Whenever any person, without a Certificate of such Declaration of Intention, as aforesaid, shall make application to be admitted a Citizen of the United States, it shall be proved to the satisfaction of the Court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant, within the limits and under the jurisdiction of the United States, for at least five years, immediately preceding the time of such application, shall be proved by the oath or affirmation of Citizens of the United States; which Citizens shall be named in the Record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least, five years, as aforesaid, shall be set forth, (together with the names of the Citizens in the Record of the Court admitting the applicant), otherwise the

same shall not entitle him to be considered and deemed a Citizen of the United States.

ART. 5. An Alien, being a free white person and a Minor, under the age of twenty-one years, who shall have resided in the United States three years, next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to become a Citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States (including the three years of his minority,) be admitted a Citizen of the United States, without having made the Declaration required in the first condition of the first section of the Act to which this is in addition, [see Art. 1,] three years previous to his admission: *Provided*, such Alien shall make the Declaration required therein, at the time of his or her admission; and shall further Declare, on oath, and prove to the satisfaction of the Court, that for three years next preceding, it has been the *bonâ fide* intention of such Alien to become a Citizen of the United States. And shall, in all other respects, comply with the laws in regard to Naturalization.

ART. 6. In case the Alien applying to be admitted to Citizenship, shall have borne any hereditary title, or been of any of the Orders of Nobility, in the Kingdom or State from which he came, he shall, in addition to the above requisites, make an express Renunciation of his Title or Order of Nobility, in the Court to which his application shall be made; which Renunciation shall be recorded in the said Court: *Provided*, that no Alien, who shall be a native citizen, denizen or subject of any Country, State or Sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a Citizen of the United States.

ART. 7. When any Alien who shall have complied with the conditions specified in ART. 1, may die before he is actually Naturalized, the Widow and the Children of such Alien shall be considered as Citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

ART. 8. The Children of persons duly Naturalized (under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become Citizens of any one of the said States, under the laws thereof,) being under the age of twenty-one years, at the time of their parents being so Naturalized, or admitted to the rights of Citizenship, shall if dwelling in the United States, be considered as Citizens of the United States. And the Children of persons who now are, or have been, Citizens of the United States, shall though born out of the limits and jurisdiction of the United States, be considered as Citizens of the United States. The right of Citizenship shall not descend to persons whose fathers have never resided within the United States. And no person, heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the war of the Revolution, shall be admitted a Citizen, without the consent of the Legislature of the State in which such person was proscribed.

ART. 9. Every Court of Record, in any individual State, having common law Jurisdiction and a Seal, and Clerk or Prothonotary, shall be considered as a District Court, within the meaning of the Naturalization Act. And every Alien who may have been Naturalized in any such Court, shall enjoy the same rights and privileges as if he had been Naturalized in a District Court of the United States.



*Oath of Intention.*

## UNITED STATES OF AMERICA.

STATE OF GEORGIA, } Be it remembered, that on the *first* day of  
*Chatham County.* } *February*, in the year of our Lord eighteen hun-  
dred and *fifty-four*, in person appeared before the undersigned, *Clerk*  
of the *Superior Court* of said County, (said Court being a Court of  
Record, having Common-Law Jurisdiction, a Clerk and a Seal,) *Charles*  
*Winship*, who being sworn according to law deposeth and saith, that his  
name is *Charles Winship*; that it is, *bonâ fide* his intention to become  
a Citizen of the United States; that he was born in that part of *Great*  
*Britain* called *England*, and in the County of *Middlesex*; that he is *forty*  
years of age; that he is a *Subject of Great Britain*, and that his allegiance  
is due to *Victoria*, the reigning *Queen*; that he emigrated from *Liverpool*  
and landed at *Savannah*, in the State of Georgia, (*where he has resided ever*  
*since*,) on the *first* day of *January*, in the year of our Lord eighteen hun-  
dred and *fifty-four*, and that he intends to settle and remain in the State  
of Georgia.

And further, deponent saith, that he doth hereby renounce forever,  
all Allegiance and Fidelity, to every foreign Prince, Potentate, State  
or Sovereignty whatsoever, and particularly to the Kingdom of *Great*  
*Britain*, and the reigning *Queen Victoria*, of which *Kingdom* he, lately,  
was a *subject*.

Sworn to and subscribed, }  
before me, } [L. S.]  
*James Walsh, C. S. C.*

CHARLES WINSHIP.

*Certificate of the Clerk.*

STATE OF GEORGIA, } CLERK'S OFFICE, *Superior Court*,  
*Chatham County.* } *February 1, 1854.*

This is to certify that the original of the above and foregoing Affi-  
davit, is now of file in my Office, and that the above is a full and true  
copy of said original, so of file. And said original Affidavit has been  
recorded.

The applicant, *Charles Winship*, has *blue* eyes, *black* hair, and *sallow*  
complexion; he is by occupation, a *Printer*.

*Given under my Official Signature and seal of Office.*

JAMES WALSH, C. S. C. [L. S.]

*Petition for Naturalization.*

STATE OF GEORGIA, } To the *Superior Court* of said County.  
*Bibb County.* } The *Petition* of *Charles Winship*, late of the  
County of *Middlesex*, in that part of *Great Britain* called *England*, show-  
eth, that on the *first* day of *February*, in the year of our Lord eighteen  
hundred and *fifty-four*, he filed in the Clerk's Office of the *Superior*  
Court of the County of *Chatham*, in the State aforesaid, his Declaration,  
under oath, of his intention to become a Citizen of the United States;  
(a certified copy of which Declaration of Intention, is here in Court  
produced and shown.) And your Petitioner further states, that he

has resided in the United States for the term of five years next preceding this his application for admission to Citizenship, to wit, from the first day of *February*, eighteen hundred and *fifty-four*, until the day of the date of this application. And your Petitioner further sheweth, that he is now in the *forty-fifth* year of his age; *that he has borne no Title or Order of Nobility*. Wherefore, Petitioner prays this honorable Court that he may be permitted to take and subscribe the Oath of Allegiance and Fidelity, as prescribed by the constitution of the United States and the laws passed in conformity thereto, by the honorable Congress, and be admitted a Citizen of the same. This *May* 1, 1859.

CHARLES WINSHIP.

*Affidavit of Character and Residence.*

STATE OF GEORGIA, } In person appeared before the undersigned, a  
*Bibb County.* } Justice of the Peace, in and for said County, *John Doe and Richard Roe*, Citizens of the United States, residing in the County and State aforesaid, who being sworn say, that they have been acquainted with *Charles Winship*, (now applying for Citizenship,) for *two* years last past; that during that time he has resided in the City of *Macon*, in the County and State aforesaid; that he has behaved himself as a man of good Moral Character; attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

Sworn to and subscribed,  
 before me, this *May* 1, 1859. }  
*James Mack, J. P.*

JOHN DOE.

RICHARD ROE.

*Oath of Allegiance and Fidelity.*

STATE OF GEORGIA, } SUPERIOR COURT, *May Term*, 1859.  
*Bibb County.* } I, *Charles Winship*, late a *subject* of the *Kingdom* of *Great Britain*, do solemnly swear, that I do hereby, absolutely, entirely and forever, renounce and abjure, all Allegiance and Fidelity, to every foreign Prince, Potentate, State and Sovereignty whatsoever; particularly *Victoria, Queen of Great Britain*, and to the Government of *Great Britain*. And I do further swear, that I will bear true Faith and Allegiance to the Government of the United States, and to the utmost of my ability, support and defend the Constitution thereof, and the Constitution of the State of Georgia—so help me God. This *May* 1, 1859.

Sworn to and subscribed, }  
 in Open Court. }  
*Henry G. Lamar, Judge.*

CHARLES WINSHIP.

NOTE.—The Oath of Naturalization when taken, confers the rights of a Citizen. It is not necessary that there should be an Order of Court [*but it is safest,*] admitting the Alien to become a Citizen.—*Campbell vs. Gordon, et. al.* 6 Cr. 176.—*Gordon's Dig.* 438.—[The Oath of Allegiance should be recorded in the Court where it is administered, and be certified by the Clerk.—*Com.*]



*Judgment of the Court*IN BIBB SUPERIOR COURT—*May Term, 1859.**Present—the honorable Henry G. Lamar, Judge.*

It appearing to the Court here, that *Charles Winship*, did on the *first* day of *February*, eighteen hundred and *fifty-four*, file his declaration of Intention, (in the Clerk's Office of the Superior Court, of the County of *Chatham*,) to become a Citizen of the United States, in terms of the laws of the Congress of the United States, in such case made and provided. And said *Charles Winship* having produced satisfactory evidence of good Moral Character, and of the Residence required; and of his attachment to the principles of the Constitution of the United States, and of his good disposition towards the Government thereof, (and having renounced his Title of Nobility:) it is considered and adjudged by the Court, that said *Charles Winship* be, and he is hereby, admitted to all the rights, immunities and privileges of a Citizen of the United States, in terms of the Constitution and laws thereof. And it is further ordered, that the Clerk of this Court do issue to said *Charles Winship*, a certified copy of these proceedings. Judgment signed, this *May 5, 1859.*

THOMAS P. STUBBS, *Att'y pro C. W.*

NOTE.—It need not appear by the Record of Naturalization, that all the requisites prescribed by law for the admission of Aliens to the rights of Citizenship, have been complied with.—*Starke vs. Chesapeake Insurance Company*, 7 Cr. 420.—[Though it is best they should.—*Com.*]

*Semble*, that the Judgment of the Court admitting the Alien to become a Citizen, is Conclusive that all the pre-requisites have been complied with, or that parol proof may be received in aid of the Record.—7 Cr. 420.—*Pet. Con. Rep.* 344.

*Renunciation of Title of Nobility.*IN BIBB SUPERIOR COURT—*May Term, 1859.**Present—the honorable Henry G. Lamar, Judge.*

I, *Charles Winship*, late of the County of *Middlesex*, in that part of Great Britain called *England*, now in the *forty-fifth* year of my age; having arrived in the United States of America on the *first* day of *January*, eighteen hundred and *fifty-four*; having borne, under the Government of *Great Britain*, of which I have been heretofore a *subject*, the *hereditary* Title of Lord, *temporal*, whereby was conferred the right of sitting, as a member, in the *House of Lords*, one of the supreme branches of the Legislature of the said *Kingdom of Great Britain*—do, with the view and intention of becoming a Citizen of the United States of America, hereby fully, completely and forever, renounce, surrender and give up, said Title of Nobility, in order to my being admitted a Citizen of the said United States of America, agreeably to the Constitution and laws thereof. This *May 5, 1859.*

Done in open Court, before me, }  
and ordered to be recorded, }  
*Henry G. Lamar, Judge.* }

CHARLES WINSHIP.

*A true extract from the Minutes of said Court.*

[L. S.]

JAMES WALSH, *Clerk.*

*Certificate of the Clerk.*

STATE OF GEORGIA, } I, *Abner Ross*, Clerk of the Superior Court of  
*Bibb County.* } said County, (which Court is a Court of Record,  
 having common law Jurisdiction, a Clerk and a Seal,) do hereby cer-  
 tify, that the foregoing *five* sheets, contain the proceedings concerning  
 the Naturalization of *Charles Winship*, (*and of his renunciation of*  
*his Title of Nobility*,) as they are of record in my Office; that said pro-  
 ceedings are in due form of law, and are entitled to full faith and credit.  
 This *May 5, 1859*.

*Given under my official Signature and Seal of Office.*

[L. S.]

ABNER ROSS, *Clerk.*

NOTE.—The Court before which the Alien takes the Oath of Naturalization, must be satisfied that he has resided in the Country, behaved himself, etc. as required by the statutes; the Compiler has in the preceding forms, used affidavits for this purpose, but the Court has the right of requiring the personal attendance of the witnesses.



# CONSTITUTION

## OF THE

# STATE OF GEORGIA.

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### ARTICLE I.

SEC. 1. The legislative, executive and judiciary departments of government shall be distinct, and each department shall be confided to a separate body of magistracy, and no person, or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

SEC. 2. The legislative power shall be vested in two separate and distinct branches, to wit: a senate and house of representatives, to be styled the General-Assembly.

SEC. 3. The senate shall be composed of one senator from each county, chosen biennially, by the electors thereof, on the first Monday in October, until the day of election is altered by law.

SEC. 4. No person shall be a senator who shall not have attained to the age of twenty-five years, and have been nine years a citizen of the United States, and three years an inhabitant of this State; and shall have usually resided within the county for which he shall be returned, at least one year immediately preceding his election, except persons who may have been absent on lawful business of this State or of the United States.

SEC. 5. The senate shall elect by ballot a president out of their own body.

SEC. 6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present; judgment in cases of impeachment, shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, within this State; but the party convicted, shall nevertheless be subject to indictment, trial, judgment, and punishment, according to law.

SEC. 7. The house of representatives shall be as follows—each county shall have one representative, and no county shall have more than two representatives. Thirty-seven counties having the greatest population, counting all free white persons and three-fifths of the people of color, shall have two representatives. The said apportionment shall be made by the General-Assembly, at the session next after each future enumeration of the inhabitants of this State, made under the constitution and laws thereof, but at no other time.

SEC. 8. No person shall be a representative who shall not have attained to the age of twenty-one years, and have been a citizen of the United States seven years, and three years an inhabitant of this State; and have usually

resided in the county in which he shall be chosen, one year immediately preceding his election, unless he shall have been absent on the public business of this State or of the United States.

SEC. 9. The House of Representatives shall choose their speaker and other officers.

SEC. 10. They shall have solely the power to impeach all persons who have been or may be in office.

SEC. 11. No person holding any military commission or other appointment having any emolument or compensation annexed thereto, under this State, or the United States, or either of them, (except justices of the inferior courts, justices of the peace, and officers of the militia,) nor any person who has had charge of public moneys belonging to the State, unaccounted for and unpaid, or who has not paid all legal taxes or contributions to the government required of him, shall have a seat in either branch of the General-Assembly; nor shall any senator or representative be elected to any office or appointment by the Legislature, having any emoluments or compensation annexed thereto, during the time for which he shall have been elected, with the above exceptions, unless he shall decline accepting his seat, by notice to the executive, within twenty days after he shall have been elected; nor shall any member after having taken his seat, be eligible to any of the aforesaid offices or appointments during the time for which he shall have been elected.

SEC. 12. The meeting of the General-Assembly shall be annual, and on the first Wednesday in November, until such day of meeting shall be altered by law. A majority of each branch shall be authorized to proceed to business; but a smaller number may adjourn from day to day, and compel the attendance of their members, in such manner as each House shall prescribe. But no session of the General-Assembly shall continue for more than forty days, unless the same shall be done by a vote of two-thirds of both branches of the General-Assembly; the vote to be taken by yeas and nays.

The compensation of the members and officers of the General-Assembly, shall be fixed by law.

SEC. 13. Each house shall be judges of the elections, returns and qualifications of its own members, with powers to expel, or punish by censuring, fining, and imprisoning, or either, for disorderly behavior, and may expel any person convicted of any felonious or infamous offence; each house may punish by imprisonment, during session, any person not a member, who shall be guilty of disrespect, by any disorderly or contemptuous behavior in its presence, or who, during session, shall threaten harm to the body or estate of any member, for anything said or done in either house, or who shall assault any of them therefor, or who shall assault or arrest any witness in going to or returning therefrom, or who shall rescue any person arrested by order of either house.

SEC. 14. No senator or representative shall be liable to be arrested during his attendance on the General-Assembly, or for ten days previous to its sitting, or for ten days after the rising thereof, except for treason, felony or breach of the peace; nor shall any member be liable to answer for anything spoken in debate, in either house, in any court or place elsewhere; but shall nevertheless be bound to answer for perjury, bribery, or corruption.

SEC. 15. Each house shall keep a journal of its proceedings, and publish them immediately after their adjournment; and the yeas and nays of the members on any question shall, at the desire of any two members, be entered on the journals.

SEC. 16. All bills for raising revenue or appropriating moneys shall originate in the House of Representatives; but the Senate shall propose or concur with amendments, as in other bills.

SEC. 17. Every bill shall be read three times, and on three separate days,



in each branch of the General-Assembly, before it shall pass, unless in cases of actual invasion or insurrection; nor shall any law or ordinance pass containing any matter different from what is expressed in the title thereof; and all acts shall be signed by the president in the Senate, and the speaker in the House of Representatives: no bill or ordinance which shall have been rejected by either house shall be brought in again during the session under the same or any other title, without the consent of two-thirds of each branch.

SEC. 18. Each senator and representative, before he be permitted to take his seat, shall take an oath or make affirmation that he hath not practised any unlawful means, either directly or indirectly, to procure his election, and every person shall be disqualified from serving as a senator or representative for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat, or canvassed for such election, and every candidate employing like means and not elected, shall, on conviction, be ineligible to hold a seat in either house, or to hold any office of honor or profit for the term of one year, and to such other disabilities or penalties as may be prescribed by law.

SEC. 19. Every member of the Senate or House of Representatives shall, before he takes his seat, take the following oath or affirmation, to wit: "I, A B, do solemnly swear, or affirm, (as the case may be,) that I have not obtained my election by bribery, treats, canvassing, or other undue or unlawful means, used by myself, or others by my desire or approbation, for that purpose; that I consider myself constitutionally qualified as a senator or representative; and that on all questions and measures which may come before me I will give my vote, and so conduct myself, as may, in my judgment, appear most conducive to the interest and prosperity of this State; and that I will bear true faith and allegiance to the same; and to the utmost of my power and ability observe, conform to, support and defend the Constitution thereof.

SEC. 20. No person who hath been, or may be convicted of felony, before any court of this State, or any of the United States, shall be eligible to any office or appointment of honor, profit or trust within this State.

SEC. 21. Neither house, during the session of the General-Assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that at which the two branches shall be sitting; and in case of disagreement between the Senate and House of Representatives with respect to their adjournment, the governor may adjourn them.

SEC. 22. The General-Assembly shall have power to make all laws and ordinances which they shall deem necessary and proper for the good of the State, which shall not be repugnant to this Constitution.

SEC. 23. They shall have power to alter the boundaries of the present counties, and to lay off new ones, as well out of the counties already laid off, as out of the other territory belonging to the State; but the property of the soil, in a free government, being one of the essential rights of a free people, it is necessary, in order to avoid disputes, that the limits of this State should be ascertained with precision and exactness; and this convention, composed of the immediate representatives of the people, chosen by them to assert their rights, and to revise the powers given by them to the government, and from whose will all ruling authority of right flows, doth assert and declare the boundaries of this State to be as follows: That is to say, the limits, boundaries, jurisdictions and authority of the State of Georgia do, and did, and of right ought to extend from the sea, or the mouth of the river Savannah, along the northern branch or stream thereof, to the fork or confluence of the rivers now called Tugalo and Keowee, and from thence along the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugalo extends so far north;



reserving all the islands in the said rivers Savannah and Tugalo to Georgia; but if the head, spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugalo river, which extends to the highest northern latitude; thence down the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude; south by a line drawn due east, from the termination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola or Chattahoochee; thence along the middle thereof to its junction with Flint river, thence straight to the head of St. Mary's river, and thence along the middle of St. Mary's river to the Atlantic ocean; and from thence to the mouth or inlet of Savannah river, the place of beginning: including and comprehending all the lands and waters within the said limits, boundaries and jurisdictional rights, and also all the islands within twenty leagues of the sea-coast. And this convention doth further declare and assert, that all the territory without the present temporary line, and within the limits aforesaid, is now of right the property of the free citizens of this State, and held by them in sovereignty, inalienable but by their consent: *Provided nevertheless*, that nothing herein contained shall be construed so as to prevent a sale to, or contract with the United States, by the legislature of this State, of and for all or any part of the western territory of this State, laying westward of the river Chattahoochee, on such terms as may be beneficial to both parties; and may procure an extension of settlement, and an extinguishment of Indian claims in and to the vacant territory of this State, to the east and north of the said river Chattahoochee, to which territory such power of contract or sale, by the legislature, shall not extend: *And provided also*, the legislature may give its consent to the establishment of one or more governments westward thereof; but monopolies of land by individuals being contrary to the spirit of our free government, no sale of territory of this State, or any part thereof, shall take place to individuals or private companies, unless a county or counties shall have been first laid off, including such territory, and the Indian rights shall have been extinguished thereto.

SEC. 24. The foregoing section of this article having declared the common rights of the free citizens of this State, in and to all the territory without the present temporary boundary line, and within the limits of this State thereby defined, by which the contemplated purchases of certain companies of a considerable portion thereof are become constitutionally void, and justice and good faith require that the State should not detain a consideration for a contract which has failed; the legislature, at their next session, shall make provision by law for returning to any person or persons who has or have *bonâ fide* deposited moneys for such purchases in the treasury of this State: *Provided*, that the same shall not have been drawn therefrom in terms of the act passed the 13th day of Feb., 1796, commonly called the rescinding act, or the appropriation laws of the years 1796, and 1797; nor shall the moneys paid for such purchases ever be deemed a part of the funds of this State, or be liable to appropriation as such; but until such moneys be drawn from the treasury, they shall be considered altogether at the risk of the persons who have deposited the same. No money shall be drawn out of the treasury, or from the public funds of this State, except by appropriation made by law, and a regular statement and account of the receipts and expenditures of all public moneys shall be published from time to time. No vote, resolution, law, or order, shall pass



the General-Assembly, granting a donation or gratuity in favor of any person whatever, but by the concurrence of two-thirds of the General-Assembly.

SEC. 25. It shall be the duty of the justices of the inferior court, or any three of them, in each county respectively, within sixty days after the adjournment of this convention, to appoint one or more fit persons in each county, not exceeding one for each battalion district, whose duty it shall be to take a full and accurate census or enumeration of all free white persons and people of color residing therein, distinguishing, in separate columns, the free white persons from persons of color; and return the same to the clerks of the superior courts of the several counties, certified under their hands, on or before the first day of December next; the person so appointed being first severally sworn before the said justices, or either of them, duly and faithfully to perform the trust reposed in them; and it shall be the duty of the said clerks to transmit all such returns, under seal, directed to the speaker of the House of Representatives, at the first session of the legislature thereafter; and it shall be the duty of the General-Assembly, at their said first session, to apportion the members of the House of Representatives among the several counties, agreeably to the plan prescribed by this Constitution, and to provide an adequate compensation for the taking of the said census. Every person whose usual place of abode shall be in any family on the first Monday in July next, shall be returned as of such family; and every person, occasionally absent at the time of taking the enumeration, as belonging to that place in which he usually resides. The General-Assembly shall, by law, direct the manner of taking such census or enumeration, within every subsequent term of seven years, in conformity to this Constitution. And it is declared to be the duty of all officers, civil and military, throughout this State, to be aiding and assisting in the true and faithful execution thereof. In case the justices of the inferior courts should fail to make such appointments, or if there should not be a sufficient number of such justices in any county, then the justices of the peace, or any three of them, shall have and exercise like powers and authority respecting the said census; and if the census or enumeration of any county shall not be so taken and returned, then and in that case, the General-Assembly shall apportion the representation of such county, according to the best evidence in their power, relative to its population.

SEC. 26. The Legislature shall have no power to change Names, nor to Legitimate persons, nor to make or change Precincts, nor to establish Bridges or Ferries, but shall, by law, prescribe the manner in which said powers shall be exercised by the Superior or Inferior Courts, and the privileges to be enjoyed.

## ARTICLE II.

SEC. 1. The executive power shall be vested in a governor, who shall hold his office during the term of two years, and until such time as a successor shall be chosen and qualified: He shall have a competent salary established by law, which shall not be increased or diminished during the period for which he shall have been elected; neither shall he receive, within that period, any other emolument from the United States, or either of them, or from any foreign power.

SEC. 2. The Governor shall be elected by the persons qualified to vote for members of the General-Assembly, on the first Monday in October, in the year of our Lord 1825; and on the first Monday in October in every second year thereafter, until such time be altered by law; which election shall be held at the place of holding general elections, in the several coun-



ties of this State, in the same manner as is prescribed for the election of members of the General-Assembly. The returns for every election of Governor shall be sealed up by the presiding justices, separately from other returns, and directed to the President of the Senate and the Speaker of the House of Representatives, and transmitted to his excellency the Governor, or the person exercising the duties of Governor for the time being, who shall, without opening the said returns, cause the same to be laid before the Senate, on the day after the two houses shall have been organized, and they shall be transmitted by the Senate to the House of Representatives. The members of each branch of the General-Assembly shall convene in the representative chamber, and the President of the Senate, and the Speaker of the House of Representatives, shall open and publish the returns in presence of the General-Assembly; and the person having the majority of the whole number of votes given in, shall be declared duly elected Governor of this State: but if no person have such majority, then from the persons having the two highest number of votes who shall be in life, and shall not decline an election at the time appointed for the legislature to elect, the General-Assembly shall elect immediately a Governor by joint ballot; and in all cases of election of a Governor by the General-Assembly, a majority of the votes of the members present shall be necessary for a choice. Contested elections shall be determined by both houses of the General-Assembly, in such manner as shall be prescribed by law.

SEC. 3. No person shall be eligible to the office of Governor, who shall not have been a citizen of the United States twelve years, and an inhabitant of this State six years, and who hath not attained to the age of thirty years, and who does not possess five hundred acres of land, in his own right, within this State, and other property to the amount of four thousand dollars, and whose estate shall not on a reasonable estimation be competent to the discharge of his just debts, over and above that sum.

SEC. 4. In case of the death, resignation, or disability of the Governor, the President of the Senate, or the last acting President of the Senate, shall exercise the executive powers of the government until such disability be removed, in the election and qualification of the Governor by the General-Assembly: And in case of the death, resignation, or disability of the President of the Senate, or the last acting President of the Senate, the Speaker of the House of Representatives, or the acting Speaker of the House of Representatives, shall exercise the executive powers of the government until such disability be removed in the election and qualification of a Governor by the General-Assembly.

SEC. 5. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear or affirm, (as the case may be,) that I will faithfully execute the office of Governor of the State of Georgia; and will, to the best of my abilities, preserve, protect, and defend the said State, and cause justice to be executed in mercy therein, according to the Constitution and laws thereof."

SEC. 6. He shall be commander-in-chief of the army and navy of this State, and of the militia thereof.

SEC. 7. He shall have power to grant reprieves for offences against the State, except in cases of impeachment, and to grant pardons, or to remit any part of a sentence, in all cases after conviction, except for treason or murder, in which cases he may respite the execution, and make report thereof to the next General-Assembly, by whom a pardon may be granted.

SEC. 8. He shall issue writs of election to fill up all vacancies that hap-



pen in the Senate, or House of Representatives, and shall have power to convene the General-Assembly on extraordinary occasions; and shall give them from time to time information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy; and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by the legislature.

SEC. 10. He shall have the revision of all bills passed by both houses, before the same shall become laws, but two-thirds of both houses may pass a law notwithstanding his dissent; and if any bill should not be returned by the Governor within five days after it hath been presented to him, the same shall be a law, unless the General-Assembly, by their adjournment, shall prevent its return.

SEC. 11. Every vote, resolution, or order, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the Governor; and before it shall take effect, be approved by him, or being disapproved, may be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 12. There shall be a Secretary of the State, a Treasurer, and Surveyor-General, appointed in the same manner, and at the same session of the legislature; and they shall hold their offices for the like period as the Governor, and shall have a competent salary, including such emoluments as may be established by law, which shall not be increased or diminished during the period for which they shall have been elected.

SEC. 13. The great seal of the State shall be deposited in the office of the Secretary of State, and shall not be affixed to any instrument of witness, but by order of the Governor or General-Assembly; and the General-Assembly shall, at their first session after the rising of this convention, cause the great seal to be altered by law.

SEC. 14. The Governor shall have power to appoint his own secretaries.

### ARTICLE III.

SEC. 1. The judicial powers of this State shall be vested in a supreme court, for the correction of errors, a superior, inferior and justices' courts, and in such other courts as the Legislature shall, from time to time, ordain and establish. The supreme court shall consist of three judges, who shall be elected by the Legislature for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified, removable by the Governor on the address of two-thirds of both branches of the General-Assembly for that purpose, or by impeachment and conviction thereon. The said court shall have no original jurisdiction, but shall be a court alone for the trial and correction of errors in law and equity from the superior courts of the several circuits, and shall sit at least once a year, at a time to be prescribed by law, in each of five judicial districts to be hereafter laid off and designated by the Legislature for that purpose, at the most central point in such judicial district, or at such other point in each district as shall by the General-Assembly be ordained, for the trial and determination of writs of error from the several superior courts included in such judicial districts. And the said court shall, at each session in each district, dispose of and finally determine each and every case on the docket of such court, at the first term after such writ



of error brought; and in case the plaintiff in error in any such case shall not be prepared, at such first term of such court, after error brought, to prosecute the same, unless precluded by some providential cause from such prosecution, it shall be stricken from the docket, and the judgment below shall stand affirmed. The judges of the superior court shall be elected for the term of four years, and shall continue in office until their successors shall be elected and qualified, removable by the Governor on the address of two-thirds of both branches of the General-Assembly for that purpose, or by impeachment and conviction thereon. The superior court shall have exclusive jurisdiction in all criminal cases (except as relates to people of color, and fines for neglect of duty and for contempt of court, for violations against road laws, and for obstructing water courses, which shall be vested in such judicature or tribunal as shall be or may have been pointed out by law, and except in all other minor offences committed by free white persons, and which do not subject the offender or offenders to loss of life, limb or member, or to confinement in the penitentiary; in all such cases corporation courts, such as now exist or may hereafter be constituted in any incorporated city, may be vested with jurisdiction, under such rules and regulations as the Legislature may hereafter by law direct,) which shall be tried in the county where the crime was committed; and in all cases respecting titles to land, which shall be tried in the county where the land lies, and also concurrent jurisdiction in all other civil cases, and shall have power to correct errors in inferior judicatories, by writ of *certiorari*, and to grant new trials in said superior courts on proper and legal grounds; and in all cases where a new trial shall be so allowed, the judge allowing the same shall enter on the minutes of said court his reasons for the same, and the said superior courts shall have appellate jurisdiction in such other cases as may be pointed out by law, in cases arising in inferior judicatories, which shall in no case tend to remove the cause from the county in which the action originated. The inferior courts shall also have concurrent jurisdiction in all civil cases (excepting in cases respecting the titles to lands), which shall be tried in the county wherein the defendant resides; and in cases of joint obligors, or joint promissors, residing in different counties, the same may be brought in either county, and a copy of the petition and process served on the party residing out of the county in which the suit may be commenced, shall be deemed sufficient service, under such rules and regulations as the Legislature have or may direct. And in case of a maker and endorser or endorsers of promissory notes residing in different counties in this State, the same may be sued in the county where the maker resides, and a copy of the petition and process served on the endorser or endorsers residing out of the county in which the suit may be commenced, shall be deemed sufficient service under the same rules and regulations as the Legislature have or may direct, in the case of joint obligors and joint promissors. The superior and inferior courts shall sit in each county twice in every year, at such stated times as have or may be appointed by the Legislature.

SEC. 2. The judges shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them; and shall reside within their respective circuits, during their continuance in office.

SEC. 3. There shall be a State's Attorney and Solicitors elected by the persons entitled to vote for members of the legislature, at (such times and



in such manner, as the Legislature shall or may, by law, direct;) and commissioned by the Governor, who shall hold their offices for the term of four years, or until their successors shall be elected and qualified, unless removed by sentence on impeachment, or by the Governor, on the address of two-thirds of each branch of the General-Assembly. They shall have salaries adequate to their services, established by law, which shall not be increased or diminished during their continuance in office.

SEC. 4. The justices of the inferior courts shall be elected by the persons entitled to vote for members of the legislature, in such manner as the legislature may by law direct.

SEC. 5. The justices of the peace throughout this State, shall be elected by the persons residing in their respective districts, entitled to vote for members of the General-Assembly, under such rules and regulations as the legislature may by law direct.

SEC. 6. The powers of a court of ordinary or register of probates, shall be vested in an Ordinary, for each County, from whose decisions there may be an appeal to the Superior Court, under such restrictions and regulations as may be, or may have been, prescribed by law. The said Ordinary shall be *ex officio* Clerk of said Court, and may appoint a Deputy-Clerk. The Ordinary, as Clerk, or his Deputy, may issue Citations and grant Temporary Letters of Administration, to hold until Permanent Letters are granted; and said Ordinary as Clerk, or his Deputy, may grant Marriage Licenses. The Ordinaries, in and for the respective Counties, shall be elected as other County Officers are, on the first Monday in January, eighteen hundred and fifty-two, and every fourth year thereafter, and shall be commissioned by the Governor, for the term of four years. In case of a vacancy in said office of Ordinary, from any cause, the same shall be filled by election, as is provided in relation to other County Officers; and until the same is filled, the Clerk of the Superior Court, for the time being, shall act as Clerk of said Court of Ordinary.

SEC. 7. The judges of the superior courts, or any one of them, shall have power to issue writs of mandamus, prohibitions, *scire facias*, and all other writs which may be necessary for carrying their powers fully into effect.

SEC. 8. Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged, under proper heads, and promulgated in such manner as the legislature may direct; and no person shall be debarred from advocating or defending his cause before any court or tribunal, either by himself or counsel, or both.

SEC. 9. Divorces shall be final and conclusive, when the parties shall have obtained the concurrent verdicts of two special juries authorising a divorce upon legal principles.

SEC. 10. The clerks of the superior and inferior courts shall be elected on the same day as pointed out by law for the election of the other county officers.

SEC. 11. Sheriffs shall be appointed in such manner as the General-Assembly may by law direct, and shall hold their appointments for the term of two years, unless sooner removed by sentence on impeachment, or by the governor, on the address of two-thirds of the justices of the inferior court and of the peace in the county; but no person shall be twice elected sheriff within any term of four years; and no county officer after the next election shall be chosen at the time of electing a senator or representative.

#### ARTICLE IV.

SEC. 1. The electors of members of the General-Assembly, shall be citizens and inhabitants of this State, and shall have attained the age of



twenty-one years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided six months within the county: *Provided*, that in case of invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the voters of such county, may meet, under the direction of any three justices of the peace thereof, in the nearest county, not in a state of alarm, and proceed to an election, without having paid such tax so required of electors, and the persons elected thereat, shall be entitled to their seats.

SEC. 2. All elections, by the General-Assembly, shall be by joint ballot of both branches of the Legislature; and when the Senate and House of Representatives unite for the purpose of electing, they shall meet in the Representative Chamber, and the President of the Senate shall, in such cases, preside, receive the ballots, and declare the person or persons elected. In all elections by the people, the electors shall vote *viva voce*, until the Legislature shall otherwise direct. [*Now by ballot.*]

SEC. 3. The major-generals and brigadier-generals shall be elected by the people of the respective divisions or brigades; and all persons subject to militia duty shall be entitled to vote for the same, only; and shall be commissioned by the governor. All other officers of the militia shall be elected in such manner as the Legislature may direct, and shall be commissioned by the governor; and all militia officers now in commission, and those which may be hereafter commissioned, shall hold their commissions during their usual residence within the division, brigade, regiment, battalion or company, to which they belong, unless removed by sentence of a court-martial, or by the governor, on the address of two-thirds of each branch of the General-Assembly.

SEC. 4. All persons appointed by the Legislature, to fill vacancies, shall continue in office only so long as to complete the time for which their predecessors were appointed.

SEC. 5. Freedom of the press and trial by jury, as heretofore used in this State, shall remain inviolate; and no *ex post facto* law shall be passed.

SEC. 6. No person who heretofore hath been, or hereafter may be, a collector, or holder of public moneys, shall be eligible to any office in this State, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable or liable.

SEC. 7. The person of a debtor, where there is not a strong presumption of fraud, shall not be detained in prison after delivering *bonâ fide* all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law.

SEC. 8. Convictions on impeachments, which have heretofore taken place, are hereby released, and persons lying under such convictions, restored to citizenship.

SEC. 9. The writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

SEC. 10. No person within this State shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship, contrary to his own faith and judgment, nor shall he ever be obliged to pay tithes, taxes, or any other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do. No one religious society shall ever be established in this State in preference to



another, nor shall any person be denied the enjoyment of any civil right merely on account of his religious principles.

SEC. 11. There shall be no future importation of slaves into this State from Africa, or any foreign place, after the first day of October next. The legislature shall have no power to pass laws for the emancipation of slaves, without the consent of each of their respective owners previous to such emancipation. They shall have no power to prevent emigrants, from either of the United States to this State, from bringing with them such persons as may be deemed slaves by the laws of any one of the United States.

SEC. 12. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection by such slave, and unless such death should happen by accident in giving such slave moderate correction.

SEC. 13. The arts and sciences shall be promoted in one or more seminaries of learning, and the legislature shall, as soon as conveniently may be, give such further donations and privileges to those already established as may be necessary to secure the objects of their institution; and it shall be the duty of the General-Assembly at their next session to provide effectual measures for the improvement and permanent security of the funds and endowments of such institutions.

SEC. 14. All civil officers shall continue in the exercise of the duties of their several offices, during the periods for which they were appointed, or until they shall be superseded by appointments made in conformity to this Constitution. And all laws now in force shall continue to operate, so far as they are compatible with this Constitution, until repealed; and it shall be the duty of the General-Assembly to pass all necessary laws and regulations for carrying this Constitution into full effect.

SEC. 15. No part of this Constitution shall be altered, unless a bill for that purpose, specifying the alterations intended to be made, shall have been read three times in the House of Representatives, and three times in the Senate, on three several days in each house, and agreed to by two-thirds of each house respectively; and when any such bill shall be passed in manner aforesaid, the same shall be published at least six months previous to the next ensuing election for members of the General-Assembly; and if such alterations, or any of them so proposed, shall be agreed to in their first session thereafter by two-thirds of each branch of the General-Assembly, after the same shall have been read three times on three separate days in each respective house, then, and not otherwise, the same shall become a part of this Constitution.

We, the underwritten delegates of the people of the State of Georgia, chosen and authorized by them to revise, alter, or amend the powers and principles of their Government, do declare, ordain, and ratify the several articles and sections contained in the six pages hereunto prefixed, as the Constitution of this State; and the same shall be in operation from the date hereof.

In testimony whereof, we, and each of us respectively, have hereunto set our hands, at Louisville, the seat of Government, this thirtieth day of May, in the year of our Lord one thousand seven hundred and ninety-eight, and in the twenty-second year of the independence of the United States of America; and have caused the great seal of the State to be affixed thereto.

# CONSTITUTION

## OF THE

# UNITED STATES.

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1. WE, the people of the United States, in order to form a more perfect Union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America :

### ARTICLE I.—SECTION I.

2. All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### SECTION II.

3. The House of Representatives shall be composed of members chosen every second year, by the people of the several States ; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

4. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States ; and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

5. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three ; Massachusetts, eight ; Rhode Island and Providence Plantations, one ; Connecticut, five ; New York, six ; New Jersey, four ; Pennsylvania,



eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

6. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

7. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

### SECTION III.

8. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

9. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year: and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

10. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

11. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

12. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

13. The Senate shall have the sole power to try all impeachments; when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

14. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

### SECTION IV.

15. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

16. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

### SECTION V.

17. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to

day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

18. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

19. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

20. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

#### SECTION VI.

21. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

22. No Senator or Representative shall during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

#### SECTION VII.

23. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

24. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

25. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate



and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

#### SECTION VIII.

The Congress shall have power—

26. To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence, and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States.

27. To borrow money on the credit of the United States.

28. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

29. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States.

30. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

31. To provide for the punishment of counterfeiting the securities and current coin of the United States.

32. To establish post-offices and post-roads.

33. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

34. To constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

35. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

36. To raise and support armies, (but no appropriation of money to that use shall be for a longer term than two years.)

37. To provide and maintain a navy.

38. To make rules for the government and regulation of the land and naval forces.

39. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

40. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress.

41. To exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings: And

42. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the government of the United States, or in any department or officer thereof.

#### SECTION IX.

43. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year eighteen hundred and eight; but a tax or duty

may be imposed on such importation, not exceeding ten dollars for each person.

44. The privilege of the writ of Habeas Corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

45. No bill of attainder, or *ex post facto* law, shall be passed.

46. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein-before directed to be taken.

47. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.

48. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

49. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall without the consent of Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign State.

#### SECTION X.

50. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

51. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace; enter into any agreement or compact with another State, or with a foreign power, or engage in a war unless actually invaded, or in such imminent danger as will not admit of delay.

#### ARTICLE II.—SECTION I.

52. The executive power shall be vested in a President of the United States of America; he shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

53. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

54. [Amendment of 1803.] The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign



and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

55. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice.

56. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

57. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

58. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

59. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of his said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

60. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

61. Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

## SECTION II.

62. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer, in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power

to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

63. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers as they may think proper in the President alone, in the Courts of law, or in the Heads of Departments.

64. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

### SECTION III.

65. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### SECTION IV.

66. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.—SECTION I.

67. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

### SECTION II.

68. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.

69. In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

70. The trial of all crimes, except in cases of impeachment, shall be by



jury ; and such trial shall be held in the State where the said crimes shall have been committed ; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

#### SECTION III.

71. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

72. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

#### ARTICLE IV.—SECTION I.

73. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

#### SECTION II.

74. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

75. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

76. No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

#### SECTION III.

77. New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the jurisdiction of any other State ; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned, as well as of the Congress.

78. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

#### SECTION IV.

79. The United States shall guarantee to every State in this Union, a Republican form of Government, and shall protect each of them against invasion ; and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened,) against domestic violence.

#### ARTICLE V.

80. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents

and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no State without its consent shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

81. All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

82. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby: anything in the Constitution or laws of any State to the contrary notwithstanding.

83. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

84. The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

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A M E N D M E N T S .

FIRST CONGRESS—FIRST SESSION—MARCH 4, 1789.

## ARTICLE I.

85. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## ARTICLE II.

86. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

87. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.



## ARTICLE IV.

88. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

89. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## ARTICLE VI.

90. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

## ARTICLE VII.

91. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII.

92. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

93. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

94. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## THIRD CONGRESS—SECOND SESSION—DEC. 2, 1793.

## ARTICLE XI.

95. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.

# RULES OF PRACTICE.

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## RULES OF THE SUPREME COURT.

RULE I. All attorneys who have been admitted to practise in the superior courts of this State, may be admitted to practise in the supreme court, on application : provided they shall exhibit to the court satisfactory proof of good private and professional character, and pay to the clerk of the supreme court the usual fee of five dollars, who shall issue to each applicant a license under the seal of the court, upon each applicant taking and subscribing the following oath : *I, ———, do solemnly swear (or affirm, as the case may be,) that I will demean myself as attorney or counsellor of this court uprightly and according to law ; and that I will support the constitution of the State of Georgia and the constitution of the United States.*

RULE II. The written recommendation of any one or more respectable members of the bar, certifying to the good private and professional character of an applicant for admission, shall be sufficient evidence of character, and will in all cases be required.

RULE III. Any attorney from other States or Territories shall be admitted to plead and practise in this court, who will produce satisfactory proof that he has been regularly licensed in the highest judicial tribunal of such State or Territory, and is at the date of his application a practising attorney of the same.

RULE IV. A brief of the oral, and a copy of the written evidence adduced in the court below, shall be embodied in the bill of exceptions, and shall constitute a part of the same.

RULE V. Every motion for any rule, order or judgment, shall be submitted to the court in writing by the counsel who makes it, and if granted, shall be handed to the clerk.

RULE VI. No paper belonging to the clerk's office shall be taken therefrom without leave of the court ; and when such leave is granted, the party receiving papers shall receipt to the clerk for the same.

RULE VII. All cases returned to this court shall be entered on the bench docket and numbered, on or before the court meets, on the first day of the term to which they are respectively returned, and the cases first received by the clerk shall be first entered.

RULE VIII. The clerk shall furnish a transcript of the bench docket for the use of the bar ; and the bench docket shall not be subject to inspection during the sessions of the court.

RULE IX. All cases entered on the bench docket shall be called and tried in the order in which they are there entered. It shall, however, be competent for the court, upon special cause shown, to set down a case for hearing out of its regular order.

RULE X. The attorney who makes out and tenders the bill of exceptions,



shall sign his name to the same, and shall be, with the counsel representing the case before this court, bound for costs.

RULE XI. When cases are called for hearing, and there is no appearance by the plaintiff in error, the defendant may have the plaintiff called, and move the Court to dismiss the writ, or may open the record and pray for affirmance of the judgment; and in case the writ is dismissed, or the judgment affirmed, the plaintiff in error shall pay the cost; and should the defendant fail to appear, then the plaintiff shall be entitled to have him called, and open the record, and pray for a reversal of the judgment.

RULE XII. Upon the reversal of any judgment, order or decree of the superior courts, the party in whose favor the reversal is had, shall be entitled to collect in the court below all the costs which have accrued in the cause.

RULE XIII. Upon the clerk of this court producing satisfactory evidence by affidavit, or the acknowledgment of the parties, their sureties or attorneys, of having served a copy of the bill of costs due by them in this court, on such parties, sureties, or attorneys, an attachment may issue against such parties, sureties and attorneys, to compel payment of costs.

RULE XIV. The counsel for the plaintiff in error shall furnish each of the judges and the reporter with a copy of the bill of exceptions and a note of the points or questions intended to be made, and a statement of the facts in the cause, which shall be submitted to each of the judges and a reporter, at or before the first day of the term to which the cause is returned, with a list of the authorities expected to be relied on. No agreement or admission between the parties or their attorneys shall be binding, unless the evidence thereof shall be in writing, subscribed by the party or his attorney, against whom the same shall be alleged.

RULE XV. Only two counsel shall be permitted to argue for each party, plaintiff and defendant, in a cause; and the counsel for plaintiff in error shall begin and conclude, reading all the authorities upon which he expects to rely, in his opening argument; and in all special matters springing out of a cause at issue, or otherwise, the actor or party submitting a point to the court shall begin and conclude; and no cause shall be argued by brief alone.

RULE XVI. The remitter shall contain a copy of the judgment of the court annexed to the bill of exceptions, and a transcript of the record of the proceedings below, as brought into this court under the seal of this court, and signed by the clerk, and the same shall be delivered to the party in whose favor the decision shall be made, on the payment of fees, by whom it shall, together with the bill of costs, be transmitted to the court below.

RULE XVII. Whenever, pending a cause in this court, either party shall die, the proper representatives of such party may voluntarily come in and be admitted parties to the suit upon motion; and thereupon the cause shall be heard and determined as in other cases; and if, on or before the first term succeeding the decease of a party dying, there shall be no representation of his estate, or if represented, parties shall not be thus voluntarily made, then, and in either of said events, the other party may at that term suggest the death on the record, and thereupon, on motion, obtain an order that unless such representation be had, and parties made thus voluntarily, as herein before authorized, on or before the second day of the term then next succeeding, the party moving such order, if defendant, shall be entitled to have the writ of error dismissed, and if the plaintiff, he shall be entitled to open the record, and proceed to a hearing: *Provided*, that a copy of every such order shall be published in one of the gazettes at the seat of government, three successive weeks, at least sixty days before the said last named term of the court, or served on the adverse party thirty days before the first day of said term.

RULE XVIII. No cause shall be heard until a complete record shall be filed,



containing in itself, without references *aliunde*, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court; and all objections to the completeness of the record shall be made in writing, and verified by affidavit, on or before the third day of the term to which the cause is returned; and in all cases where such exceptions are filed, the cause shall be considered as returned to the next succeeding term, and the court shall on motion award a writ of *certiorari*, directed to the court below, for the purpose of causing to be sent up the entire record, which writ shall be served by the party or his attorney moving the same, and shall be returned to the next term after it is awarded: *Provided*, that nothing herein contained shall prevent this court from awarding a process of contempt against any officer, in any case, where he may be considered as in default.

RULE XIX. In all cases where a bill of exceptions has been certified and signed, a writ of error shall be made out by the counsel for the plaintiff in error to this court, which shall be directed to the judge of the superior court so certifying and signing, together with a citation to the defendant in error to appear and answer.

RULE XX. Such writs of error shall issue in the name of the governor of the State, shall bear test in the name of the judges of this court, shall be signed by the clerk, and sealed with the seal of this court, and shall be returnable to the next succeeding term, and the citation shall bear test in the name of the Judges of this court, shall be signed by the clerk, and sealed with its seal.

RULE XXI. The writs of error, with the citations thereto annexed, shall be filed with the clerk of the superior court, at the time of tendering the bill of exceptions, copies of which, made out by counsel of the plaintiff in error, shall be served on the defendant in error, or his counsel, by the sheriff of the county, or by counsel for plaintiff in error, within ten days from the signing and certifying of the bill of exceptions; and an entry of the same shall be made on the original writ by the counsel or sheriff, who makes it, officially; and it shall be the duty of the clerk of the court wherein such bill is signed and certified, to send up to this court, with the record of the cause, such original writ and citation, duly by him certified to be the originals filed in his office.

RULE XXII. It shall be the duty of the clerk of this court to keep on hand for the use of the bar, blank writs of error and citations, according to the form adopted by this court, duly by him signed and sealed, to be furnished to the bar, on application therefor.

RULE XXIII. The plaintiff in error shall, on or before the first day of the term to which the writ of error is returned, or immediately upon the filing of the record thereafter, file in the clerk's office of this court an assignment of errors; and the defendant in error shall, on or before the second day of the term, or within twenty-four hours after the assignment is filed, make out and file in office a traverse of such assignment; and upon failure of plaintiff to file his assignment as herein required, the defendant shall, upon motion, be entitled to have the writ dismissed; and should the defendant, as herein required, fail to file his traverse, then the plaintiff shall be entitled to proceed *ex parte* with his cause: *Provided*, that no error shall be assigned, except such as is expressed in the bill of exceptions.

RULE XXIV. The following shall be the form of writs of error:

*The Governor of the State of Georgia,*

To \_\_\_\_\_ judge of the superior courts of  
circuit, \_\_\_\_\_

GREETING:

Because in the records and proceedings, as also in the rendition of a judgment in a cause in the superior court of \_\_\_\_\_ county, before you, between \_\_\_\_\_ and \_\_\_\_\_ a manifest error is charged to have been committed to the damage of the said \_\_\_\_\_ as by \_\_\_\_\_ complaint and



bill of exceptions by you signed and certified appears, and we being willing that the error complained of, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment in said cause as complained of be given, that then under your seal distinctly and openly you cause to be sent the records and proceedings aforesaid, with all things concerning the same, to the supreme court of the State of Georgia, together with this writ, so that you have the same at  
on the                      day of                      next in the said court, to be then and there held, that the records and proceedings aforesaid being inspected, the said court may cause further to be done therein to correct that error, what of right, and according to law, should be done.

WITNESS, The Honorable JOSEPH H. LUMPKIN, HIRAM WARNER, and  
[L. S.] EUGENIUS A. NISBET, judges of the supreme court of the State of  
Georgia, this                      day of                      184 .

R. E. MARTIN, *Clerk.*

RULE XXV. The following shall be the form of writs of citation :  
*State of Georgia:*

To

GREETING :

YOU are hereby cited and admonished to be and appear at a supreme court to be held at                      the                      day of                      next, pursuant to a writ of error filed in the clerk's office of the superior court of the county of                      in said State, wherein                      is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in this behalf.

WITNESS, The Honorable JOSEPH H. LUMPKIN, HIRAM WARNER,  
[L. S.] and EUGENIUS A. NISBET, judges of the supreme court of  
the State of Georgia, this                      day of                      184 .

R. E. MARTIN, *Clerk.*

RULE XXVI. All opinions delivered by the judges of this court shall, immediately upon delivery thereof, be handed to the clerk, whose duty it shall be to record the same, and then to deliver the originals, with a transcript of the judgment or decree of the court thereon, to the reporter.

RULE XXVII. The papers belonging to the causes brought before this court shall be handed to the clerk in person, or transmitted to him at Milledgeville.

RULE XXVIII. It shall be the duty of the clerk to note the time of filing assignments of error, and of traverses of such assignments, and no cause shall be considered as ready for a hearing until entry is made on the docket of "issue joined," which entry shall be only in cases where errors have been assigned and traversed, as provided in these rules.

RULE XXIX. No argument or brief of counsel shall be received by the reporter, after the opinion of the court has been delivered.

RULE XXX. The counsel for the defendant in error, at or before the opening of the cause, shall submit to each of the judges and the reporter, a statement of the points to be made, together with a list of the authorities intended to be relied on.

RULE XXXI. After this year (1846), no cause (except such as are provided for in the sixth section of the act creating this court) shall be considered as properly brought up, so as to authorize this court to hear and determine the same, unless the clerk shall certify and send up a complete transcript of the entire record below, together with the bill of exceptions, within ten days after the filing of the original notice of the signing of the bill of exceptions, with the return of service thereon.

**RULE XXXII.** All applications for writs of mandamus against defaulting officers, under the sixth section of the act creating this court, shall be made at its first term, wherever holden, and on or before the third day of the term, after the alleged default occurs, unless prevented by providential cause; and the party seeking said writ against the Clerk, for failing or refusing to send up the transcript of the whole record, and bill of exceptions, as required by law, shall state on oath, that he applied personally, or by attorney, to said officer, for said record and bill of exceptions, on or before the last day of the time allowed by law for certifying and sending up the same.

**RULE XXXIII.** In all cases brought before this court, the bill of exceptions must distinctly specify the points of error in the judgment of the court below, upon which the plaintiff in error expects to rely upon the hearing, and that this rule take effect from and after the 1st day of January next (1847).

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## COMMON LAW RULES.

### *Manner of Pleading.*

1. THE order of pleading shall correspond with that laid down by Judge Blackstone; and in no case shall more than one counsel be heard in conclusion.

### *Appeals.*

2. No appeal shall be entered unless good security is given; exceptions to the security on the appeal must be taken on or before the last day of the first term of the appeal; and if such exceptions are sustained, other and good security shall be given, or the Appeal will be dismissed. If the security, good at first, becomes insolvent pending the appeal, the party appealing shall give other good security, in the discretion of the court, or the appeal shall be dismissed.—*Cobb's Anal.* 93.

3. Appeals must be entered by the appellant in person, or by his attorney-at-law, or by an attorney-in-fact duly authorized by warrant for that purpose; which warrant shall be filed in the clerk's office at the time of entering the same. Upon cause shown, the court will allow time to file such warrant; but such appeal shall be, of course, dismissed, and execution issue without further order, if such warrant be not filed within the time allowed.—*Cobb's Anal.* 94.

4. Appeals shall be tried at the first term after the appeal has been entered, unless good cause be shown for a continuance; among which good causes of a continuance, a motion, on oath to make a substantial amendment to either declaration or answer, shall be considered sufficient, unless the opposite party shall permit the amendment to be made instanter. No appeal case shall be continued more than twice by the same party, but for unavoidable providential cause.—*Cobb's Anal.* 94.

5. When an appeal is entered, either of the parties litigant, may make any amendment of the declaration or answer, they may deem necessary. The party amending shall give notice thereof in writing, accompanied by a copy of the amendment, to the adverse party, three months previous to the next term after the appeal; and if the party amending fail to give such notice, and the adverse party will state, on oath, or the attorney-at-law, state in his place, that he is taken by surprise, and is less prepared for



trial in consequence of the amendment, the cause shall be continued at the instance of the amending party.—*Cobb's Anal.* 94.

6. The following shall be the form of the recognizance upon an appeal, to be taken by the several clerks of the superior and inferior courts, in all cases of Appeal, which recognizance shall be entered on the minutes of the court, and attested by the clerk:—*Cobb's Anal.* 94.

A. B. }	and verdict for the	for
vs. }	dollars, and	cents, and cost.
C. D. }	The	being dissatisfied with the <i>verdict of the</i>
	<i>jury rendered</i> in the above cause, and having paid all costs and demanded	
	an Appeal, brings E. F., and tenders him as his security, and they, the	
	said	and E. F. acknowledge themselves, jointly
	and severally, bound to	the
	for the	
	payment of the eventual condemnation money, in said cause.	

In testimony whereof, they have hereunto set their hands and seals, this  
day of 18 .

[L. S.]  
[L. S.]

#### Answers.

7. In all cases, the answer of the defendant to a plaintiff's declaration shall plainly, fully, and distinctly, set forth the causes and points of defence, and the evidence on trial shall be confined to the same.—*Cobb's Anal.* 82.

#### Attorneys.

8. Every person making application for admission to the bar, must apply to some superior court in this State, and produce satisfactory evidence to the court of his being twenty-one years of age; of good moral character, and of his having read law. A certificate of good moral character, and of the applicant's being of full age, signed by any judge of the superior court in this State, or any reputable practising attorney thereof, will be deemed sufficient; but from all other persons a written affidavit will be required; and shall undergo the whole examination touching his qualifications in open court. All applicants for admission shall be examined on the principles of the common and statute law of England, in force in this State; the principles of equity; the Constitution of the United States, and of the State of Georgia; the statute laws of this State, and the rules of court. And in no case shall any person be admitted who shall not be considered by the court to be qualified for the practice of the law. And the following oath shall be administered to every applicant, upon his admission, viz:—

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will justly and uprightly demean myself, according to the laws, as an attorney, counsellor, and solicitor, and that I will support and defend the Constitution of the United States, and the Constitution of the State of Georgia: so help me God."—*Cobb's Anal.* 48.

After which the following commission shall be issued by the clerk:

#### STATE OF GEORGIA:

At a Superior Court, holden in and for the county of at  
term, 18 .

Know all men by these presents, that at the present sitting of the court, A. B. made his application, for leave to plead and practice in the several courts of law and equity in this State: Whereupon, the said A. B., having given satisfactory evidence of good moral character, and having been examined in open court, and being found well acquainted and skilled in the

laws, he was admitted by the court to all the privileges of an attorney, solicitor, and counsellor, in the several courts of law and equity in this State.

In testimony whereof, the presiding judge has hereunto set [L. S.] his hand, with the seal of the court annexed, this       day of       in the year 18       .

C. D., Judge Superior Court,       District, Ga.       E. F., Clerk.

9. No attorney shall ever attempt to argue or explain a case, after having been fully heard, and the opinion of the court has been fully pronounced, on pain of being considered in contempt.

10. In all cases where payment or satisfaction shall be made, on any judgment or execution, either in whole or in part, it shall be the duty of the attorney receiving the same, forthwith to enter an acknowledgment thereof, and affile the same of record in the office of the clerk of the court, where such judgment was rendered; and such clerk is required to record such acknowledgment, among the other proceedings in the cause, and also to make a note thereof, on the docket of judgment, opposite the place where such judgment is entered. And any attorney failing to comply with this rule, on or before the last day of the term, next succeeding the making of such payment or satisfaction, shall be considered in contempt, and shall pay a fine not exceeding twenty-five dollars, which it shall be the duty of the court to impose, and he shall thereupon moreover, direct the recording and noting of such payment or satisfaction.

11. Writs and other proceedings, may be signed by professional firms; when there is no firm, the Christian name of the attorney shall be added; but the usual abbreviations and initials, of all Christian names, shall be sufficient.

12. No attorney or other officer of court, shall be taken as bail, in any suit or action, depending or undetermined therein; or as security on any appeal, or other proceeding: and for a violation of this rule, the attorney or officer in court so offending, shall be punished as for a contempt, and the party shall be compelled to give other bail or security.

#### *Bail.*

13. If any case where a defendant, who has given bail, and has final judgment obtained against him, is confined in any jail in this State, other than that of the county from whence the first process issued, the *capias ad satisfaciendum* against such defendant, shall be considered as executed so far as to release the bail, when placed in the hands of the sheriff of the county where the said defendant is confined; and when the plaintiff or his attorney, is notified of such confinement, and neglects to charge him with the said *capias ad satisfaciendum*, within a reasonable time, the same shall be considered as executed, so far as to release the bail, and the bail, on motion and proof thereof, shall be discharged.—*Cobb's Anal.* 111.

#### *Certiorari.*

14. No *certiorari* will be sanctioned unless the alleged error be distinctly set forth in the petition; and no other errors shall be insisted upon, at the hearing, than are stated in the petition.—*Cobb's Anal.* 33.

15. All writs of *certiorari* shall, after having been docketed by the clerk, be delivered to the magistrate, whose proceedings are the subject of complaint, and written notice shall be given to the opposite party in interest, at least ten days before the hearing of the cause; unless the *certiorari* shall be applied for and sanctioned, within twenty days after the decision complained of.—*Cobb's Anal.* 37.



*Claims.*

16. In all cases of claims, as the burthen of proof rests with the plaintiff in execution, he is entitled to the conclusion; but if the claimant introduces no evidence, he shall have the conclusion; and the plaintiff in execution shall in every case, pay the jury fee. And in cases of illegality, the plaintiff in execution shall in like manner, pay the jury fee and conclude.—*Cobb's Anal.* 121.

17. In cases of claims, when either the plaintiff in execution, or the claimant dies, pending the claim, their representatives may be made parties, on motion, and on producing letters testamentary or of administration.—*Cobb's Anal.* 121.

18. When a claim case is called in its order for trial, an issue must be tendered within five minutes, or the levy will be dismissed, and no exceptions will be allowed to the bond or affidavit, in cases of claims or attachments, after issue joined, except such as are taken in writing, at or before the joining such issue.—*Cobb's Anal.* 121.

*Clerks and Sheriffs.*

19. When a criminal or civil process shall have been delivered to the sheriff, or his deputy, if no levy of service has been made in conformity with the exigency thereof, he shall state, specially, in his return, the cause why such levy or service has not been made. If property which hath been levied on, remains unsold, it shall be his duty, to state the cause of its so remaining unsold, and to give a particular description of the same.

20. The sheriff shall make a return to the clerk of the court, at the opening thereof, of the names of the coroner and constables of the county; four of which constables, the sheriff shall notify to attend, each term, until the whole shall have served in turn; and the sheriff shall be bound always to have at least four staves for the constables.

21. Every clerk and sheriff who cannot produce all the rules of court when required, shall be fined not exceeding ten dollars.

22. The clerks shall keep a separate book in which they shall register the names of all persons who may be fined by the court; the time when; the offence for which they are fined; the amount received and disbursed.

23. No clerk shall suffer any original paper of file to be taken from his office in vacation, without an order from the judge, for that purpose.

24. The sheriff of each county shall keep a bench warrant docket, on which he shall enter all bench warrants delivered to him, and the time when executed, if executed, the time when they may be delivered to him; and if not, the reason why they were not executed.

25. The sheriff shall in all cases put the purchaser of real property, at sheriffs' sales, into possession of the premises, without further order or proceeding, when the defendant in execution was in possession of the same; at the time of the levy or sale.—*Cobb's Anal.* 484.

*Collateral Issues.*

26. No appeal shall be allowed in collateral issues, ordered by the court; but the court will, in its discretion, grant a new trial, upon such terms as shall appear just and reasonable. But where such collateral issue is tried in the inferior court, and said court is dissatisfied with the verdict, they may permit an appeal to the superior court, at their discretion.

*Commissions.*

27. The following shall be the form of a commission, to take testimony by interrogatories:—*Cobb's Anal.* 150.

STATE OF GEORGIA, ) By his honor one of the  
County. ) judges of the court, for the county  
and State aforesaid: to Esqrs.—Greeting.

Whereas, there is a certain matter of controversy, now depending in the court, for said county, between and whereas, is a material witness in said suit, and cannot attend our said court in person, without manifest inconvenience:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two or more of you, are hereby authorized and required, to cause the said personally to come before you, and after being duly sworn, to examine concerning the said suit, agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send the same closed up, under your hands and seals, to our said court, to be held on the day of next, together with this writ.

Witness, the honorable one of the judges of said court, this day of  
[L. S.] E. F., CLERK.

NOTE.—The act of 1850, pamp. p. 115, provides, “that all commissions which have heretofore been, or may hereafter be issued in blank, for the purpose of taking testimony in any case pending, or arising in the courts of law and equity in this State, shall be valid and as effectual as if the names of the commissioners had been inserted by the officer issuing the same.” And the act of 1850, pamp. p. 276, provides, “that in all cases in the superior and inferior courts of this State, where it may become necessary to take testimony by interrogatories as heretofore practised, commissions may issue in blank, in so far as relates to the names of the commissioners; but the names of witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.”

28. Commissions may issue in blank, in so far as relates to the names of the commissioners, but the names of the witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.—*Cobb's Anal.* 150 and 152.

29. The time to be allowed for the return of commissions from any part of the United States of Noth America, if less than one hundred miles distant from the place of trial, shall be one month; if a greater distance, and less than five hundred miles, two months; if at a greater distance, three months; to any part of the West Indias, or South America, four months; to any part of Europe, eight months.—*Cobb's Anal.* 152.

30. When a commission is returned, it shall remain with the clerk, for the benefit of either party, and may be opened by consent of both parties, such consent being written on the cover of the commission; or by an order of the judge, either in term-time, or in vacation; but such order, if applied for in the vacation, must be upon five days' notice to the adverse party, or his attorney; and in cases of commission returned not executed, or directed according to rule, either party in the cause shall, upon five days' notice to the adverse party, or his attorney, be permitted to return the commission and its contents, to the commissioners, to be properly executed and directed.—*Cobb's Anal.* 152.

31. Commissions may be sent and returned by mail—to entitle the party to open the commission, the post-master, his deputy or assistant,



must receipt on the back, "Received from A B, one of the commissioners." The names of the commissioners must be written across the seals of the envelope, and the commission have such direction as will enable the court to know that it was intended for that court, and the usual abbreviations or initials of Christian names of commissioners, witnesses, attorneys, clerks, magistrates and post-masters, shall be sufficient.—*Cobb's Anal.* 153.

32. When a commission issues to examine a witness, its not having been returned shall be no cause of continuance, unless the party seeking the continuance will make the same affidavit of the materiality of the testimony, as in the case of an absent witness.—*Cobb's Anal.* 153.

#### *Consent.*

33. No consent between attorneys or parties, will be enforced by the court, unless it be in writing, and signed by the parties to the consent.

34. No consent to dispense with pleading, will in any case, be allowed; nor will any evidence be received of the contents of any written agreement between attorneys, alleged to be lost, other than a sworn copy of said agreement.

#### *Continuance.*

35. In all applications for continuances, upon the ground of the absence of a witness, it must be shown to the court, that the witness is absent; that he has been subpœnaed; that he resides in the county where the case is pending; that his or her testimony is material; that such witness is not absent by the permission, directly or indirectly, of such applicant; that he or she expects and believes, that he or she will be able to procure the testimony of such witness at the next term of said court; and that such affidavit or application is made, not for delay, but to enable the party to procure the testimony of such absent witness or witnesses, and must state the facts expected to be proved by such witness.

36. When on application for a continuance, the party makes an affidavit of the facts which he expects to prove by the absent witness, the opposite party shall not be allowed to force a trial by an admission of the facts stated in such affidavit.

#### *Default.*

37. Upon opening a judgment by default, the defendant shall plead *instanter* to the merits of the action; and no default shall be opened but upon payment of all costs which may have accrued, including two dollars of the attorney's fee. The entry of default, upon the bench docket, shall be sufficient evidence of the judgment. If the plaintiff allege himself to be surprised by the plea, the cause shall be continued at the instance of the defendant.—*Cobb's Anal.* 83.

#### *Dockets.*

38. After the court is opened, and until it adjourns, each day, the judge's dockets shall not be subject to the inspection of the bar, or their clients.

39. A criminal docket, a docket of original writs and processes; claims and special writs, as also a docket of appeals, shall be made out by the clerk for the use of the court, copies of each of which shall be furnished the bar, and shall be delivered at the first opening of the term; and all causes shall be called and tried in the order in which they are docketed, without any preference or delay, unless it shall appear to the court that it

shall be injurious to press a cause to trial, when regularly called. A different order in calling the docket may be pursued by the court, in its discretion, for the purpose of giving facility and expedition to its proceedings. The dockets shall be called but once, but if parties by consent, under permission of the court, continue their cases from day to day, said cases shall not stand for trial, until all the other business of the court is finished, and then they may be tried in their order, at the discretion of the court.

40. The clerk of each court shall keep a motion docket, on which shall be entered all motions originating in said court, or transferred for argument, from other counties. A party applying to have a motion docketed, shall certify in writing to the clerk, the delivery of a brief of such motion, to the judge, and shall pay to the clerk one dollar, at the time of docketing the same. All motions shall be called and heard in the order in which they are docketed; nor shall any motion be heard until the same shall have been docketed, in conformity to this rule.

#### *Exceptions.*

41. All matters appearing on the face of the declaration, or process, that would not be good in arrest of judgment, shall be taken advantage of at the first term, and will be immediately determined on by the court, unless where the court may entertain a doubt as to the law on the point; if so, the cause will be suspended, giving the defendant leave to plead his exceptions specially, together with any other matter which he intends to rely on in his defence. The exceptions thus pleaded shall be argued at a subsequent term, and if not sustained, the plaintiff shall have his election to try *then*, or to continue without a showing.—*Cobb's Anal.* 82.

#### *Executors and Administrators.*

42. An executor or administrator shall not be permitted in answer, to deny any deed, bond, bill, note, or other written instrument of his testator or intestate, being the foundation of the plaintiff's action, without an oath or affirmation endorsed on such plea or answer, that he has reason to believe, and does verily believe, that such plea or answer is true.

#### *Illegality.*

43. When an affidavit of illegality is made, on account of partial payment made on the execution, the defendant, at the time of making such affidavit, must pay up the amount he admits to be due, or the sheriff shall proceed to raise that amount, and accept the affidavit for the balance.

44. No second affidavit of illegality shall be received, by any sheriff or other officer.—*Cobb's Anal.* 118.

#### *Imparlance.*

45. No imparlance shall be allowed on writs of *scire facias*, issued to enforce recognizances, either on the civil or criminal side of the court, to make executors or administrators parties to a cause pending therein; or for the revival of judgments, unless upon special cause shown to the court.

#### *Interrogatories.*

46. When a cause is proceeding *ex parte* to a jury, interrogatories may be served by depositing a copy with the clerk, and posting a notice to that effect in his office, addressed to the party in default, ten days before issuing



out a commission. No exception to a written interrogatory, on the ground that it is a leading question, shall prevail, unless it be filed with the interrogatories, before the issuing of the commission.—*Cobb's Anal.* 145.

47. All objections to the execution and return of interrogatories on appeal trials, the form of the commission, or service of notice, must be made by the party seeking to avail himself of them, before the cause has been submitted to the jury, or they will not be heard by the court; provided that the said interrogatories have been twenty-four hours in the clerk's office; and if they have remained in the possession of the party intending to use them, they shall be communicated to the adverse party before the cause is called for trial.—*Cobb's Anal.* 152.

#### *Justices of the Peace.*

48. The justices of the peace shall return all examinations and recognizances by them taken, or other papers that may be necessary to be acted upon by the superior courts of their respective counties, on or before the first day of the term of each court, except in the counties of Richmond and Chatham, where they shall make said return ten days before said courts, if taken that length of time before the sitting of the court.—*Cobb's Anal.* 389.

#### *Lost Papers.*

49. Upon the loss of any original declaration, plea, bill of indictment, or other office paper, a copy of the same shall be established *instantly*.

50. Whenever a party wishes to introduce the copy of a deed or other instrument, between the parties litigant, in evidence, the oath of the party, stating his belief of the loss or destruction of the original, and that it is not in his possession, power, or custody, shall be a sufficient foundation for the introduction of such secondary evidence.

51. Whenever a party wishes to introduce the copy of a grant in evidence, the oath of the party, stating that the original is not in his power or possession, and that he knows not where it is, shall be sufficient foundation for the introduction of such copy.

52. When any person shall seek to establish lost papers, under the 6th section of the judiciary act of 1799, he shall present a petition to the superior court, together with a copy in substance, of the paper lost, as nearly as he can recollect, which copy shall be sworn to by the party, or proved by other evidence: whereupon a rule *nisi* may be obtained, calling upon the opposite party to show cause, (if any he have,) why the copy should not be established in lieu of the original so lost; which rule shall be personally served on the party, if to be found within the State, and if he cannot be found, then the said rule *nisi*. shall be published in some public gazette in the State, for the space of three months.—*Cobb's Anal.* 26, 31 and 32.

#### *Motions.*

53. All grounds of motion for non-suit, in arrest of judgment, and for continuance; all objections to testimony, and all exceptions to declarations, must be urged and insisted upon at once. And after a decision upon one or more grounds, no others afterwards urged, will be heard by the court.

54. All motions for amendment of the declaration, shall be made at the first term, or after the case is continued, at any subsequent term; and all motions for amendment of the answer, shall likewise be made, after the continuance of the case; and a copy of the amendment, in either case,

shall be served on the opposite party. Exceptions to the declaration or answer, shall be taken before the case is submitted to the jury, either at common law or on the appeal; and in no case shall the declaration or answer be amended, in matters of substance, after the case has gone to the jury, at common law; nor on the appeal, except at the discretion of the court, and upon payment of costs; and provided, that in all cases when an amendment of the declaration or answer is made, after the case has gone to the jury on the appeal, the party so amending shall be charged with a continuance, at the pleasure of the court, or the opposite party.—*Cobb's Anal.* 78.

55. On all the rules to show cause, the party called on shall begin and end his cause; and on all special matters, springing out of a cause at issue, the actor or party submitting a point to the court, shall in like manner begin and close; and in all cases arising *ex delicto*, if the defendant pleads justification, and takes upon himself the burthen of proof, he shall have the like privilege.

56. Every motion, for any rule or order, shall be submitted to the court in writing, by the counsel who makes it, and if granted by the court, shall be delivered to the clerk.

#### *Notice.*

57. No notices under the 6th section of the judiciary act of 1799, hereafter to be served, shall be available, unless the party for whose benefit they shall be served, or his agent, shall previously have made affidavit, (or his attorney stated in his place,) that the deponent, or attorney, has reason to believe the books or papers, required to be produced, are or have been in existence; that he believes they are within the possession, power, or control of the person notified; and that they are material to the issue, which affidavit shall be filed in office, before the notice shall be available;) nor unless the court shall be of opinion that the books or papers, sought to be obtained, are material to the issue. And it shall be deemed a sufficient compliance with the notice, (whether served heretofore, or hereafter,) if the party notified, being a resident of any other county of the State than that wherein the case is pending, shall make an affidavit in writing, before some judicial officer of the State, that the books or papers required and not produced, are not, nor have been, in his possession, power or control, since the service of such notice. And if the person notified be, or reside without the State, at the time of receiving such notice, an affidavit to the foregoing effect, taken before some judge of the superior or county court, of the State or kingdom, in which he may be, shall be deemed sufficient.—*Cobb's Anal.* 26.

58. In actions of assumpsit, for the recovery of unliquidated demands, a bill of particulars shall be annexed to the copy served on the defendant; and in every case where the plea of set-off shall be filed, a copy of the set-off shall be filed, at the time of filing the answer; and when the bill of particulars is not annexed to the declaration, the plaintiff shall lose a term; and if service of said bill of particulars is not effected upon the defendant, by the succeeding term, a non-suit shall be awarded.

59. When a merchant or tradesman, being a party to a suit, in any of the courts of this State, shall be notified to produce his books of accounts, or any of them, to be used as testimony on the trial, if the party so notified shall transmit to the court in which the case is pending, a transcript from his books, of all his accounts and dealings with the opposite party, together with an affidavit, (taken pursuant to the *fifty-ninth* [fifty-seventh] common law rule of court,) that the same is a fair and perfect transcript



as aforesaid; and that he cannot produce the book or books required, without suffering a material injury in his trade, this shall be deemed a compliance with the notice: provided, if the adverse party will swear that he verily believes that the books contain entries material to him, which do not appear in the transcript, the court will grant him a commission, to be directed to certain persons, named by the parties and approved by the court, to cause the adverse party to produce the book or books required, (he being first sworn that the book or books produced, is or are all that he has, that answer to the description in the notice,) and to examine said books, and to transmit to the court, a fair statement of the accounts between the parties, under their hands, sealed and transmitted, as on other commissions; which statement, when received, shall be deemed a sufficient compliance with the notice.—*Cobb's Anal.* 26.

60. All notices, required to be given to any officer of the court, must be in writing.

#### *New Trials.*

61. A motion for a new trial shall not operate as a supersedeas, unless an order to that effect be entered on the minutes; and in every application for a new trial, a brief of the testimony in the cause, shall be filed by the party applying for such new trial, under the revision and approval of the court.—*Cobb's Anal.* 25, 40 and 41.

#### *Prochein Ami.*

62. No *prochein ami* shall be permitted to institute any personal action, in the name and behalf of an infant, until such *prochein ami* shall have entered into sufficient bond to the governor of the State, for the use of the infant and his representatives, conditioned well and faithfully to account of and concerning his said trust; which bond may be sued by order of the court, in the name of the governor, and for the use of such infant, and such bond shall be filed in the office of the clerk of the court in which the suit may be commenced.—*Cobb's Anal.* 280.

#### *Recognizances.*

63. All recognizances taken by the clerk, for the appearance of either parties or witnesses, shall be written in a book [kept] for that purpose, separate and distinct from the minutes, to which he shall affix an alphabetical index.—*Cobb's Anal.*, title "*Justice of the Peace.*"

#### *Scire Facias.*

64. Writs of *Scire Facias*, issued to revive judgments, shall be returnable to the next superior court of the county where the defendant or defendants reside, under the following regulations, viz.: The party suing out such writs, shall procure a full exemplification of the record of the judgment, which shall be sent to the clerk of the superior court of the county where the *scire facias* is made returnable, and filed with the same; whereupon, judgment may be revived, on such exemplification, in like manner as if the original judgment had been recovered in the county where the *scire facias* is made returnable.—*Cobb's Anal.* 90.

65. A suggestion of the death of either party, for the purpose of enabling the survivor, or the representatives of such deceased party, to issue *scire facias* to revive, may be made either in term-time or in vacation; in either case the order for issuing the *scire facias*, shall be of course, and be granted by the

clerk; and such suggestion, and the order thereon, shall be filed among the proceedings in the cause.

### *Signing Judgments.*

66. In all and every case, when a verdict has been obtained at common law, and an appeal entered without judgment signed upon the said verdict, judgment shall not afterwards be signed further back than the time of disposing [of] said appeal.—*Cobb's Anal.* 89.

### *Subpœna.*

67. Subpœnas *duces tecum*, may issue against third persons without order, at any time, upon application to the clerk.—*Cobb's Anal.* 144.

### *Surveys.*

68. County surveyors are required to deliver copies of re-surveys, by them made, to each of the parties concerned, upon their application, and at their own proper costs, within ten days after such application is made; and the surveyor, executing a survey, shall be bound to attend court, to prove the same, and shall be allowed the *per diem* pay of a witness, attending upon subpœna.

69. Surveys of lands, in any quantity of two hundred acres, or less, shall be laid down by a scale of ten chains to the inch; and over that quantity, by a scale of twenty chains to an inch.

70. No survey made under the rule of court, shall be received in evidence, unless it appears that at least ten days' notice of the time of commencing such survey, was given to the opposite party, by the one who offers it in evidence.

71. Every surveyor shall represent on his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership.

72. After a cause has gone to the jury, and any evidence been heard in it, neither party shall be allowed to make any objection to a rule of survey, made in the case; or the manner in which it may have been obtained, or the survey executed.

73. Either party, in actions of ejectment, shall be entitled, as matter of right, to a rule of survey, upon application to the clerk in vacation.—*Cobb's Anal.* 649.

### *Witnesses.*

74. Witnesses shall first be examined by the party introducing them, then cross-examined by the adverse party; further examination shall not be had but by leave of the court first obtained, and then only upon the declaration of the attorney or witness, that a material fact has not been stated, to which all further inquiries shall be directed; and in all cases in which more than one attorney is retained on either side, the examination and cross-examination shall be conducted by one of the counsel only; and at the opening of the case, both parties shall state to the court, to which attorney the examination and cross-examination of witnesses is confined.—*Cobb's Anal.* 143.

### *Points to be given in charge.*

75. *Ordered*, That counsel shall propound, in writing, the points of law on which they may wish the instructions of the court to the jury, before the judge shall commence his charge.



## EQUITY RULES.

*Defendant Failing to Answer.*

1. When a Bill has been sanctioned and filed, and the usual process taken out and served, or advertised according to the rules of court, and no answer shall be filed within the time allowed; if the defendant or defendants still remain in contempt at the next term thereafter, so as to entitle the complainant to have his bill taken *pro confesso*, the order shall be made by the court, on application of the complainant; but, such order shall only operate as an interlocutory decree, which shall entitle the complainant to have his cause submitted *ex parte* to a jury; provided, always, that if the complainant or complainants, shall swear or affirm, that the answer of the defendant or defendants, to the whole or part of the charges contained in the said bill, is absolutely necessary, and that without such answer, he, she or they, cannot support the truth of his, her or their allegations, the court may permit such complainant or complainants, to make a special oath or affirmation, (as the case may be,) of what he, she or they, know or believe, the said defendant or defendants, could or ought to Answer, and such oath or affirmation may be given to the jury, together with the Bill and other proof.

*Defendant out of the County or State.*

2. When a defendant, or defendants, reside out of the county in which a Bill originates, and is sanctioned, which fact must be verified by affidavit, the Court, or judge at chambers, shall pass such order for appearance and Answer, as the distance of the defendant's residence shall warrant; service or publication of which order, according to the exigency thereof, shall be deemed a sufficient service to compel an appearance; and subsequent proceedings shall be the same as if the defendant or defendants had been served with process by the sheriff of the county, where the subpoena is made returnable. And if it shall appear by affidavit, that a defendant is absent from this State, or cannot be found therein, service may be effected by publication in a public news-paper, upon the order of the Court, requiring him to appear and Answer the complainant's Bill, in such time as the court may direct.

*Plea and Demurrer, when Filed and Argued.*

3. A Plea or Demurrer, in part or to the whole of a Bill, shall be filed at the return term, and shall be argued during the term, or upon motion and cause shown, at such other time as the court may direct. The court will, however, in its discretion, upon sufficient cause shown, grant further time for filing such Plea or Demurrer; and such order shall express the time within which the same shall be filed, and the further time thereafter, within which it shall be argued, or be considered as dismissed. And notice in writing, of the filing of such Plea or Demurrer, shall be given to the adverse party, or his counsel, at the time of filing thereof. The defendant or defendants, in any Bill in Equity, may demur, plead and answer, at the same time, at the first term; the Demurrer, Plea and Answer, may be separately disposed of, in their order, but the filing of the Plea or Answer, shall, in no case, operate to overrule the Demurrer.—*Cobb's Anal.* 135.

*Filing Answer, Exceptions thereto, &c.*

4. All Answers shall be filed within four months after the adjournment of the Court to which the subpoena is returnable, unless further time be granted. Exceptions to Answers, must be filed before the hour for jury business, on the second day of the term thereafter, or said answers will be deemed sufficient;

and if such Exceptions shall be sustained by the Court, the defendant shall perfect his Answer, within such further time as the court may order. But if said amended Answer be defective, the defendant may be punished as for contempt, and shall pay all costs that have accrued, up to the time of filing such defective Answer. Nothing in this rule shall be construed to prevent the respondent from filing his Answer at any time after the filing a bill, for injunction against him, and moving the judge at chambers, who granted the bill, for the dissolution of the injunction, if the equity of the bill shall be sworn off by the Answer: but in such cases, a rule *nisi.*, stating the grounds of the application, and fixing the time and place of hearing the motion, shall be served upon the complainant, at least ten days before the hearing of any such motion; and the judge shall have power to order such amendments as are usually made in open court, and to hear and determine Exceptions to Answers.

*Filing Replication, its Effect.*

5. A general Replication to the Answer shall be filed, and what is admitted in the Answer, shall remain admitted, notwithstanding such general Replication. No special Replication shall be received, but the complainant may, by his Replication, controvert any part of the facts stated in the defendant's Answer, if he will admit the rest to be true; and such Replication shall be confined to the particular matter controverted, and the defendant shall only be obliged to produce proof of such controverted matter. In either case, the cause shall be at issue after Replication filed, without Rejoinder.—*Cobb's Anal.* 136.

*Jury, how selected.*

6. In trials in equity, the jury shall be taken from the pannel of the grand inquest, in the manner prescribed by law for the selection of special jurors.—*Cobb's Anal.* 95.

*Paying Costs, and giving Security.*

7. When a bill praying an injunction is presented to the judge for his sanction, there shall be annexed to it the clerk's certificate of payment of costs, and security being given, as required by law; and on application to the judge, additional security may be ordered, if circumstances require it. All injunctions shall be granted until further order had thereon.—*Cobb's Anal.* 127 and 128.

*Injunction granted upon Terms.*

8. That an injunction shall not issue to stay proceedings at law, in any action in which a verdict shall have been given for money, unless a sum of money equal to the amount which the party applying for the injunction acknowledges to be due, is deposited with the clerk of the court, to be paid to the adverse party; and a certificate of such payment should accompany the bill.—*Cobb's Anal.* 137.

*Equitable Interposition to be by Bill.*

9. When either party in a suit at law, shall be desirous of obtaining the interposition of the court, in the exercise of its equitable jurisdiction, in the prosecution or defence of said suit, the application therefor shall be by bill, which may be sanctioned by the judge, upon such terms as shall seem just and reasonable; and no bill to enjoin an action at law shall be sanctioned by the judge, unless the same shall be presented in time to be made returnable to the regular trial term of the case, next after the sanction of the bill, unless good



cause to the contrary, to be judged by the chancellor, shall be shown in the application for the bill, and be sworn to by the party.

*Commissions, Interrogatories, and Continuance.*

10. Commissions shall be issued, returned and published, and notice of interrogatories given, in like manner as in cases of common law; and the like rules shall be observed, on application for continuance.

*Oath of Defendant to his Answer.*

11. The oath or affirmation of a defendant, to his or her answer, shall be in the following form: "You, A B, do swear, or solemnly, sincerely and truly, declare and affirm, (as the case may be,) that what is contained in your answer, as far as concerns your own act and deed, is true of your own knowledge; and that what relates to the act or deed of any other persons, you believe to be true.—*Cobb's Anal.* 136.

*Revival of Bills.*

12. Bills may be revived by petition to the judge at chambers, or at a term-time; and upon the presentment of a petition for that purpose, an order for the revival of the bill *nisi causa*, on the first day of the term next thereafter, shall be passed; a copy of the petition and order shall be served by the sheriff on the defendant, at least twenty days before the meeting of the said court. No bill or subpoena will be required.

*Issuing Execution Under Decree.*

13. When a case in equity shall be tried by a jury, who shall render a verdict for a specific sum, a decree shall be entered for such sum, and such execution may be issued thereon, as if the cause had been decided at common law. Where the finding of a jury is special, and requires the payment of money, and some duty to be performed, the sum so found may be recovered in the manner herein-before provided; and such duty shall be enforced by the court by attachment for contempt or otherwise, according to the course of proceedings in equity.

*Equity Docket to be Kept by the Clerk.*

14. The clerk shall keep a docket for equity cases, distinct and separate from the causes at common law; in which shall be registered the names of the parties, and titles of all bills, and the time of filing the same, with notices of the pleadings and orders in the cause, up to the final decree.

*Going to Trial on Bill and Answer.*

15. In all cases where the parties go to trial upon the bill and answer alone, the complainant's solicitor shall have the conclusion.

*Rule may be Served on Solicitor.*

16. After appearance by the party defendant, to any bill in equity, by any solicitor of this court, the service of any subpoena, to make better answer; or any rule or order of the court, on such defendant or solicitor, shall be sufficient. Service upon complainant, or his solicitor, shall in like manner be deemed sufficient service.

*Exhibits, how Filed.*

17. Copies of all deeds, writings and other exhibits, shall be filed with the bill or answer, and no other exhibits shall be admitted, unless by order of the court, for some special and good cause shown. The production of the original, if not admitted by the answer, may be required on the hearing: and upon application to the court, or to the judge in vacation, and cause shown, the original of any exhibit will be ordered to be deposited in the clerk's office, for the inspection of the adverse party.

*Applications for Writs of Ne Exeat.*

18. Applications for writs of *Ne Exeat*, other than such as are provided for by the Act of December 6th, 1813, shall be upon bill filed and sworn to, or affirmed, by complainant, or his attorney in fact; and such oath or affirmation, shall particularly state the amount of the debt claimed, and that the sum mentioned is due, and that there is reason to apprehend the loss of the whole, or a part of said sum, if the defendant should depart without the jurisdiction of the court. The sheriff shall discharge the defendant from custody under such writ, upon his giving bond, with two good securities, (who shall be liable to be excepted to, in like manner as in case of bail at common law,) conditioned for the payment to the complainant, his executors and administrators, of such sum as shall be decreed, with interest and costs; and further in all respects to do, conform to, and perform the decree of the court, in the premises.—*Cobb's Anal.* 129 and 137.

*Auditor's Report.*

19. When auditors have made up their report, the same shall be returned into the clerk's office without delay, and shall remain open to the inspection of both parties.

*Docket of Decrees and Executions.*

20. A docket of decrees, and also a docket of executions, or other process for the enforcement of decrees, shall be kept by the clerk, in cases in equity, in like manner as the dockets of judgments and executions at law: and the acknowledgments of satisfaction on decrees in equity, may be enforced in the same manner, and under like penalties, as judgments at law.

*Prochein Ami.*

21. The rule at common law which requires a *Prochein Ami* of an infant to give bond to account, &c., shall also be observed in equity.—*Cobb's Anal.* 280.





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L. CECIL TURNER  
 Attorney, Georgia



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